

978
No. 2679

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United States
Marshal,

Plaintiffs in Error,

VS.

H. M. FAGERBERG,

Defendant in Error.

VOLUME I.

(Pages 1 to 224, Inclusive.)

Upon Writ of Error to the United States District Court of the
Territory of Alaska, Fourth Division.

Filed

DEC 1 1915

F. D. Monckton,

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

| | Page |
|---|------|
| Amended Answer..... | 5 |
| Amended Complaint..... | 1 |
| Answer, Amended..... | 5 |
| Assignments of Error... .. | 440 |
| Attorneys of Record, Names and Addresses of.. | 1 |
| Bill of Exceptions and Transcript of Evidence. | 15 |
| Bond on Writ of Error..... | 446 |
| Certificate of Clerk U. S. District Court to Transcript of Record..... | 454 |
| Certificate of Notary Public to Depositions of Alex Wilson et al..... | 375 |
| Certificate of Notary Public to Depositions of Thomas Carstens et al..... | 350 |
| Citation..... | 449 |
| Complaint, Amended..... | 1 |
| Defense..... | 246 |
| Depositions of W. C. Prater et al..... | 284 |
| Depositions of Alex Wilson and and C. I. Range. | 352 |
| DEPOSITIONS ON BEHALF OF DEFENDANTS: | |
| CARSTENS, THOMAS..... | 316 |
| Cross-examination by T. J. Donohoe.. | 326 |
| Redirect Examination by Thomas R. Lyons..... | 336 |

| Index. | Page |
|--|------|
| DEPOSITIONS ON BEHALF OF DEFEND- | |
| ANTS—Continued: | |
| Recross-examination by T. J. Donohoe. | 338 |
| Redirect Examination by T. R. Lyons. | 339 |
| Re-recross-examination by T. J. Dono- | |
| hoe..... | 340 |
| PRATER, W. C..... | 284 |
| Cross-examination by Mr. Donohoe... | 299 |
| RANGE, C. I..... | 353 |
| Cross-examination by T. J. Donohoe.. | 357 |
| Redirect Examination by Thomas R. | |
| Lyons..... | 366 |
| Recross-examination by T. J. Donohoe. | 366 |
| WILSON, ALEX..... | 311 |
| Redirect Examination..... | 340 |
| Recross-examination by T. J. Donohoe. | 342 |
| Recalled—Redirect Examination | 367 |
| Recross-examination by T. J. Donohoe. | 369 |
| Redirect Examination by Thomas R. | |
| Lyons..... | 373 |
| Recross-examination by T. J. Donohoe. | 373 |
| WOLF, HENRY..... | 343 |
| Cross-examination by T. J. Donohoe.. | 345 |
| Evidence, Transcript of..... | 15 |
| Exceptions, and Transcript of Evidence, Bill of. | 15 |
| Exceptions to Refusal of Court to Give Certain | |
| Instructions..... | 406 |
| EXHIBITS: | |
| Exhibit “A” to Deposition of W. C. Prater. | 295 |
| Exhibit “B” Attached to Deposition of | |
| Alex G. Wilson..... | 349 |

| Index. | Page |
|--|------|
| EXHIBITS—Continued: | |
| Plaintiff's Exhibit "B"—Bill of Sale.... | 29 |
| Plaintiff's Exhibit "C"—Lease..... | 34 |
| Plaintiff's Exhibit "D"—Agreement..... | 40 |
| Plaintiff's Exhibit "E"—Letter, August 15, 1913, Carstens to Fagerberg..... | 174 |
| Plaintiff's Exhibit "F"—Complaint (Cars- tens Packing Co. vs. J. A. Fagerberg). | 407 |
| Plaintiff's Exhibit "G"—Stipulation as to. | 438 |
| Plaintiff's Exhibit "H"—Proof of Claim.. | 245 |
| Plaintiff's Exhibit "I"—Bill of Sale..... | 309 |
| Plaintiff's Exhibit "K"—Letter, July 22, 1912, Carstens Packing Co. to Fager- berg | 388 |
| Defendants' Exhibit "C"—Attached to Deposition of Alex Wilson..... | 369 |
| Defendants' Exhibit No. 1—Stipulation as to..... | 437 |
| Defendants' Exhibit No. 2—Letter..... | 87 |
| Defendants' Exhibit No. 3—Check..... | 89 |
| Defendants' Exhibit No. 5—Order..... | 223 |
| Defendants' Exhibit No. 6—Return of Deputy Marshal Hoffman..... | 233 |
| Defendants' Exhibit No. 7—Return of Deputy Marshal Millsap..... | 236 |
| Findings Requested by Plaintiff and Defend- ants, Special..... | 413 |
| Instructions to Jury..... | 393 |
| Judgment..... | 419 |
| Minute Order Extending Time to Settle and Prepare Bill of Exceptions..... | 436 |

| Index. | Page |
|---|------|
| Minute Order Extending Time to Settle and Prepare Bill of Exceptions and Staying Execution..... | 434 |
| Motion for a Directed Verdict for Plaintiff, etc.. | 392 |
| Motion for New Trial..... | 414 |
| Names and Addresses of Attorneys of Record.. | 1 |
| Order Allowing, Certifying and Settling Bill of Exceptions..... | 453 |
| Order Allowing Motion to Amend Amended Complaint..... | 393 |
| Order Allowing Writ of Error and Fixing Su- persedas Bond..... | 443 |
| Order Denying Motion for New Trial..... | 417 |
| Order Enlarging Time to Settle Bill of Excep- tions..... | 435 |
| Petition for Writ of Error..... | 439 |
| Rebuttal..... | 376 |
| Reply..... | 12 |
| Special Findings Requested by Plaintiff and De- fendants..... | 413 |
| Stenographer's Certificate to Transcript of Evidence and Proceedings..... | 407 |
| Stipulation as to Record..... | 437 |
| Stipulation as to Supersedeas Bond..... | 454 |
| Stipulation Specifying Contents of Bill of Ex- ceptions..... | 451 |
| Stipulation to Take Depositions..... | 282 |
| Stipulation to Take Depositions of Alex Wil- son and C. I. Range..... | 351 |

Index.

Page

TESTIMONY ON BEHALF OF PLAINTIFF:

| | |
|--------------------------------------|-----|
| BOUSE, JOHN H. D..... | 241 |
| FAGERBERG, H. M..... | 17 |
| Cross-examination by Mr. Ritchie.... | 63 |
| Redirect Examination by Mr. Dimond.. | 141 |
| Recross-examination by Mr. Ritchie.. | 149 |
| Recalled..... | 243 |
| Recalled in Rebuttal..... | 376 |
| Cross-examination by Mr. Ritchie.... | 380 |
| FAGERBERG, J. A..... | 154 |
| Cross-examination by Mr. Ritchie.... | 186 |
| Redirect Examination by Mr. Dimond.. | 238 |
| Recalled..... | 257 |
| Recalled..... | 280 |
| Recalled—In Rebuttal.... | 384 |
| Cross-examination by Mr. Ritchie.... | 390 |

TESTIMONY ON BEHALF OF DEFEND-
ANTS:

| | |
|-------------------------------------|-----|
| RITCHIE, E. E..... | 246 |
| Cross-examination by Mr. Donohoe... | 248 |
| Recalled | 277 |
| Transcript of Evidence..... | 15 |
| Verdict | 411 |
| Writ of Error..... | 444 |

*In the District Court for the Territory of Alaska,
Third Division.*

Names and Addresses of Attorneys of Record.

Messrs. LYONS & RITCHIE, Valdez, Alaska,
Mr. C. F. WILT, Tacoma, Wash.,

Attorneys for the Defendants and Plaintiff in
Error.

Messrs. DONOHUE & DIMOND, Valdez, Alaska,
Attorneys for the Plaintiff and Defendants in
Error. [4*]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal and
JAS. M. MILLSAP, Deputy United States
Marshal,

Defendants.

Amended Complaint.

Comes now the above-named plaintiff, and, for
cause of action against the above-named defendants,
alleges as follows, to wit:

I.

That the above-named defendant, F. R. Brenne-
man, is the United States Marshal for the Third
Judicial Division of the Territory of Alaska; and

*Page number appearing at foot of page of original certified Record.

that the above-named defendant Jas. M. Millsap is a deputy United States Marshal for said division and territory, appointed by and serving under the said defendant, Brenneman, and is now stationed at McCarthy, Alaska. That both of said officers are duly qualified. That the acts hereinafter complained of were done and performed by said defendants acting in their official capacities as United States marshal and deputy United States marshal, respectively, as aforesaid. (Amended by interlineation this 10th day of May, 1915, by leave of Court. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.)

II.

That on the sixth day of August, 1914, the plaintiff was the lawful owner and in possession of and entitled to the possession of a certain roadhouse, together with the appurtenances, the land about the said roadhouse and upon which the said roadhouse is situate, all furniture and [5] equipment in said roadhouse, and all barns and outbuildings in connection with the said roadhouse, situate at what is known as the town of Blackburn, Alaska, at Mile 192 of the Copper River & Northwestern Railway, and within the jurisdiction of this court, the same being commonly known as the "Blackburn Roadhouse," also five head of horses, and harnesses, saddles, sleds, wagons and general equipment, all of which will more fully appear by reference to a complete inventory of said property attached hereto and made a part hereof, and marked Exhibit "A."

III.

That thereafter and on the said sixth day of Au-

gust, 1914, while plaintiff was so seized and possessed of said property and entitled to the possession thereof, the said defendant Millsap, acting at the instance of and authorized by the defendant Brenne-man, wrongfully and unlawfully and by force, and against the will and over the protest of said plaintiff, ousted and ejected plaintiff from said roadhouse, and took possession of the same, and took possession of all of the property above described and set forth in Exhibit "A" and deprived plaintiff of the use and possession of said property, and has since at all times denied, and does still deny to plaintiff the possession of said property.

IV.

That plaintiff, at the time the said property was so seized by the said defendants, was engaged in running the said roadhouse as a public roadhouse, and was using the said horses in doing a general freighting and packing business to the surrounding mining camps, and in said business was making an average daily profit of thirty dollars (\$30.00), which sum plaintiff claims as his damage for each day that he has been deprived and will be deprived of said property; That plaintiff has been further damaged by the wrongful and unlawful acts of said defendants in so depriving him of his [6] property, on account of demoralization of trade and loss of business prestige, in the sum of \$2,000.00; that plaintiff has been further damaged in the sum of \$1,000.00 on account of personal expenses incurred and necessary to be incurred in this action.

V.

That the value of the property described herein,

and an inventory of which is set forth in Exhibit "A," not including the land mentioned therein, is \$8,350.00, and that plaintiff has been further damaged in that sum, to wit, \$8,350.00, by reason of the wrongful taking and detention of said property as aforesaid.

WHEREFORE, Plaintiff prays judgment against the defendants and each of them as follows, to wit:

1. That plaintiff be adjudged and decreed to be the owner and entitled to the possession of all of the property described above, and set forth in Exhibit "A."

2. That plaintiff have and recover of and from the said defendants all of the property herein described, or the value thereof, viz., \$8,350.00, in case the delivery of said property cannot be had; for his damages in the sum of three thousand dollars, and for the further sum of thirty dollars per day as damages for the interest on the money invested in said property, and as damages in being deprived of the use of said property.

3. For his costs and disbursements in this action, and

4. For such other and further relief as to the Court shall seem just.

DONOHUE & DIMOND,
Attorneys for Plaintiff. [7]

United States of America,
Territory of Alaska,—ss.

H. M. Fagerberg, being first duly sworn, deposes and says: That he is the plaintiff named in the within Amended Complaint; that he has read the same,

knows the contents thereof, and that the same is true he verily believes.

H. M. FAGERBERG.

Subscribed and sworn to before me this 2d day of January, 1915.

[Seal]

F. R. BARNES,

U. S. Commissioner in and for the Chitina Precinct,
Territory of Alaska.

Service of copy acknowledged, at Valdez, Alaska,
this 7th day of January, 1915.

E. E. RITCHIE,

One of Attorneys for Defendants.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Jan. 7, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy.
[8]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal and
JAMES M. MILLSAP, Deputy United States
Marshal,

Defendants.

Amended Answer.

Comes now the defendants, by their attorneys,
C. E. Bunnell and Lyons & Ritchie, and by leave of

Court first had and obtained, file this, their amended answer, and admit, deny and allege as follows:

I.

Referring to paragraph 1 of plaintiff's amended complaint, defendants admit the allegations therein contained.

II.

Referring to paragraph 2 of said amended complaint, defendants deny each and every allegation therein contained, except as hereinafter stated.

III.

Referring to paragraph 3 of said amended complaint, defendants deny each and every allegation therein contained except as hereinafter stated and specifically admitted.

IV.

Referring to paragraph 4 of said amended complaint, defendants deny each and every allegation therein contained.

V.

Referring to paragraph V of said amended complaint, defendants deny that the property described and demanded in plaintiff's amended complaint, exclusive of the land, is or was at any time mentioned in said amended complaint, of the value of \$8,350, or any other sum in excess of \$1,500; deny that plaintiff has been damaged in any sum whatever by any act of defendants, and deny that any of said property was taken by defendants wrongfully. [9] For a further and separate answer to plaintiff's amended complaint defendants allege:

1.

That at all times hereinafter mentioned plaintiff herein and one J. A. Fagerberg were general partners, engaged in operating and conducting the roadhouse described in plaintiff's amended complaint, and were the joint owners of all of said property described in said amended complaint, and they are now the owners of all of said property; that plaintiff never was and is not now the sole owner of all of said property, nor of any part thereof.

2.

That during all the times mentioned in said amended complaint and during all the times mentioned in the complaint in civil action No. — now pending in this court, the said Carstens Packing Company was, and is now, a corporation duly organized under the laws of the State of Washington.

3.

That on the 31st day of July, 1914, the plaintiff *herein*, the said J. A. Fagerberg, were general partners, engaged in operating said roadhouse as aforesaid, and were then and there indebted to the said Carstens Packing Company in the sum of \$6,274.47 and interest; that on said last-named day the said Carstens Packing Company commenced an action in the above-entitled court against the said J. A. Fagerberg to enforce the collection of the above-named sum then and there due from the said J. A. Fagerberg and the plaintiff herein, doing business as Fagerberg Brothers, to said Carstens Packing Company, and thereafter in said action a summons was duly issued out of this court, and an affidavit and

undertaking for attachment were duly filed therein, and thereafter a writ of attachment was duly issued in said action out of the clerk's office of said court and delivered to the United States Marshal of the Third Division of Alaska for levy; that thereafter, under and by virtue of said writ of attachment the said marshal, F. R. Brenneman, one of the defendants herein, by his codefendant, James M. Millsap, deputy marshal, duly levied upon the property described in the amended complaint and took the same into custody. [10]

4.

That said action of the Carstens Packing Company against J. A. Fagerberg was filed by E. E. Ritchie, one the attorneys for plaintiff therein, without full information regarding the same from said Carstens Packing Company; that said Ritchie drew and verified the complaint upon the facts as they had been hurriedly communicated to him, and he was not aware that H. M. Fagerberg was a partner of J. A. Fagerberg in all dealings of said J. A. Fagerberg with the Carstens Packing Company; that when the amended answer was filed by said Ritchie in this cause, setting up that said Carstens Packing Company had learned since the filing of said company's case against J. A. Fagerberg that J. A. Fagerberg and H. M. Fagerberg were partners the same was done on information written to said Ritchie by a Seattle attorney of said Carstens Packing Company; that said amended answer was drawn by said Ritchie and verified by him without communication with any officer of the Carstens Packing Company,

and the mistake of fact contained in it is due to misunderstanding of attorneys through slow communication between Seattle and Valdez; that plaintiff herein was actually, during all the times mentioned in the amended complaint herein, a partner of said J. A. Fagerberg; and plaintiff herein and said J. A. Fagerberg during all the times mentioned in said action, and during all the times mentioned in this action, were general partners, engaged in conducting said roadhouse; and said indebtedness, alleged in said action of Carstens Packing Company against said J. A. Fagerberg to be due from said J. A. Fagerberg to said Carstens Packing Company, was actually due and owing, at all times mentioned in said complaint in said action, from the firm of Fagerberg Brothers, composed of plaintiff herein and said J. A. Fagerberg.

5.

That on or about July 15, 1913, said J. A. Fagerberg, for the purpose of hindering, delaying cheating and defrauding the creditors of said firm of Fagerberg Brothers, executed and delivered to plaintiff herein, a pretended bill of sale, whereby said J. A. Fagerberg pretended to transfer and convey to plaintiff [11] herein all the property described in plaintiff's amended complaint herein which was then owned and possessed by said Fagerberg Brothers, together with a general store building, and all goods, wares and merchandise contained therein, situated at Chititu, Alaska; said bill of sale was without consideration, and was made solely for

the purpose of hindering, delaying, cheating and defrauding the creditors of said Fagerberg Brothers and of J. A. Fagerberg; and plaintiff accepted said bill of sale knowing that the same was made by said J. A. Fagerberg for the purposes aforesaid; and plaintiff in receiving said bill of sale for all of said property received the same for the purpose of aiding in hindering, delaying, cheating and defrauding the creditors of Fagerberg Brothers, consisting of plaintiff herein and said J. A. Fagerberg and any separate creditors of said J. A. Fagerberg; plaintiff herein never gave any consideration of any kind or character for said pretended transfer to him by said J. A. Fagerberg by said pretended bill of sale.

6.

That all of said property described in the amended complaint herein was attached by defendant Mill-sap, as deputy United States marshal, acting for and under the defendant Brenneman, United States marshal, under *and virtue* of said writ of attachment issued in said action of Carstens Packing Company against J. A. Fagerberg; that the amount sued for in said action, to wit, the sum of \$6,274.47 was then and there due from plaintiffs herein and said J. A. Fagerberg, doing business under the name of Fagerberg Brothers, to said Carstens Packing Company, and all the property attached by virtue of said writ of attachment in said action was at the time the property of plaintiff herein and said J. A. Fagerberg, doing business under the name of Fagerberg Brothers.

Wherefore defendants ask that this action be dis-

missed at the cost of plaintiff and that defendants have judgment for their costs herein expended.

C. E. BUNNELL and
LYONS & RITCHIE,
Attorneys for Defendants.

United States of America,
Territory of Alaska,—ss.

F. R. Brenneman, being duly sworn says he is one of [12] the defendants in this action; that he has read the foregoing amended answer and he believes the same to be true.

F. R. BRENNEMAN.

Subscribed and sworn to before me this 8th day of January, 1915.

[Notarial Seal] THOS. P. GERAGHTY,
Notary Public.

My commission expires Feb. 15, 1915.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Jan. 8, 1915. Arthur Lang, Clerk. By T. P. Geraghty, Deputy. [13]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United
States Marshal,

Defendants.

Reply.

Comes now the above-named plaintiff, and for reply to the amended answer of defendants on file herein says:

I.

Replying to the first paragraph of defendants' affirmative defense as set forth in said answer, plaintiff denies each and every allegation therein contained.

II.

Referring to the second paragraph of defendants' affirmative defense, plaintiff has no knowledge or information from which to form a belief, and therefore denies the same.

III.

Referring to the third paragraph of defendants' affirmative defense, plaintiff admits that on or about the 31st day of July, 1914, a suit was filed in the above-entitled court wherein the plaintiff was Carstens Packing Company and the defendant J. A. Fagerberg; that in said suit summons was issued out of said court; that an affidavit and undertaking of attachment were filed therein, and that a writ of attachment was issued out of said court; that said writ of attachment was put into the hands of defendants for service, and that defendants were acting under said writ when they ousted and ejected plaintiff and deprived plaintiff of the use and possession of the property in controversy, as set forth in plaintiff's complaint on file herein, and denies each and every other allegation therein contained.

IV.

Referring to the fourth paragraph of said affirmative defense, plaintiff denies each and every allegation therein contained. [14]

V.

Referring to the fifth paragraph of said affirmative defense, plaintiff says that on or about the 15th day of July, 1913, J. A. Fagerberg made and executed and delivered to plaintiff a deed and bill of sale, conveying to plaintiff all of the property described in plaintiff's amended complaint, together with the general store building and the goods, wares, and merchandise therein contained, situated at Chititu, Alaska; denies that said deed and bill of sale was without consideration, was made for the purpose of hindering, delaying or defrauding or cheating any of the creditors of plaintiff or J. A. Fagerberg, or both, or that said deed and bill of sale was received with the intent or purpose of so delaying, hindering, cheating or defrauding any of said creditors, and states that said deed and bill of sale was given and received for an adequate and valuable consideration, and denies each and every other allegation in said paragraph contained.

VI.

Referring to the sixth paragraph of said affirmative defense, plaintiff admits that the property described in said amended complaint was taken by the defendant Millsap, as deputy United States marshal, acting for and under defendant Brenneman, United States marshal, under the writ of attachment issued in the action of Carstens Packing Company

against J. A. Fagerberg, and denies that J. A. Fagerberg, or that any person other than plaintiff had any interest in said property at the time of the seizure thereof by defendants; alleges that plaintiff was the sole and lawful owner of said property and that its seizure under said writ of attachment was wrongful and unlawful, and denies each and every other allegation in said paragraph contained.

WHEREFORE, plaintiff prays judgment as in his complaint.

DONOHUE & DIMOND,
Attorneys for Plaintiff. [15]

United States of America,
Territory of Alaska,—ss.

I, H. M. Fagerberg, being first duly sworn, depose and say: That I am the plaintiff named in the above-entitled action, and that the foregoing Reply to Amended Answer is true as I verily believe.

H. M. FAGERBERG.

Subscribed and sworn to before me this 10th day of May, A. D. 1915.

[Seal] CHAS. A. HAND,
Deputy Clerk of the District Court for the Territory of Alaska, Third Division.

United States of America,
Territory of Alaska,—ss.

Due and legal service is hereby accepted, this 19th day of Feb., A. D. 1915, by receiving a copy thereof, duly certified to by Anthony J. Dimond, one of the attorneys for the plaintiff.

JOHN LYONS,
One of Attorneys for Defendants.

[Endorsed]: Filed in the District Court, Territory of Alaska, Third Division, Feb. 18, 1915. Arthur Lang, Clerk. By Chas. A. Hand, Deputy. [16]

*In the District Court for the Territory of Alaska,
Third Division.*

No. 687.

H. M. FAGERBERG,

Plaintiff,

vs.

F. R. BRENNEMAN, United States Marshal, and
JAMES M. MILLSAP, Deputy United
States Marshal,

Defendants.

Bill of Exceptions and Transcript of Evidence.

BE IT REMEMBERED, That the above-entitled cause came on duly and regularly to be heard, at Valdez, Alaska, on Monday, May 10, 1915, at 10 o'clock A. M. of said day, before the Honorable Fred M. Brown, Judge of said court, and a jury:

The plaintiff herein being represented by his attorneys and counsel, Messrs. Donohoe & Dimond:

The defendants herein being represented by their attorneys and counsel, Messrs. Lyons & Ritchie:

The jury having been empaneled and sworn, opening statements were made by Mr. Dimond on behalf of the plaintiff and by Mr. Ritchie on behalf of the defendants:

Whereupon the following additional proceedings were had and done, to wit: [17]

FAGERBERG vs. BRENNEMAN ET AL.

INDEX.

| Plaintiff's Case. | Defendants' Case. |
|----------------------------|------------------------------|
| Fagerberg, H. M..... 2-202 | Ritchie, E. E.205-23 |
| Cross 42 | Cross207 |
| Fagerberg, J. A.....126 | Prater, W. C. (Dep.)....237 |
| Cross154-214-234 | Cross 249 |
| Bouse, J. H. D.....200 | Wilson, Alex. (Dep.).....259 |
| | 285 |
| | 309 |
| | Cross261 |
| | 286 |
| | 310 |
| | Carstens, Thos. (Dep.)...264 |
| | Cross273 |
| | Wolf, Henry (Dep.).....288 |
| | Cross289 |
| | Range, C. I. (Dep.).....295 |
| | Cross300 |

REBUTTAL.

| |
|-------------------------------|
| Fagerberg, H. M.....317 |
| Cross321 |
| Fagerberg, J. A.325 |
| Cross329 |
| Instructions of Court.....332 |

INDEX TO EXHIBITS.

| Plaintiff's Ex. | Defendants' Ex. |
|------------------------------|---------------------------------------|
| A—Part of Complaint. | 1. Receipted bills 63 |
| B—Bill of Sale..... 13 | 2. Letter 65 |
| C—Lease 17 | 3. Check 67 |
| D—Agreement 21 | 4. Cash Book107 |
| E—Letter144 | 5. Order for goods.....186 |
| F—Complaint148 | 6. Return of Marshal..... 195 |
| G—Olsen notes197 | 7. “ 196½ |
| H—Claims bankruptcy203 | A (Prater Dep.).....246 |
| I—Bill sale258 | B (Wilson Dep.)292 |
| J—Bill317 | C “ 310 |
| K—Letter327 | |

[18*—1†]

*Page-number of Original Certified Transcript of Record.

†Original page-number of Bill of Exceptions as same appears in Original Certified Transcript of Record.

[Testimony of H. M. Fagerberg, the Plaintiff, in His Own Behalf.]

H. M. FAGERBERG, the plaintiff, called and sworn as a witness in his own behalf, testified as follows:

Direct Examination, by Mr. DIMOND.

Q. What is your name?

A. H. M. Fagerberg.

Q. You are generally known as Harry Fagerberg? A. Yes, sir.

Q. Where do you reside?

A. Blackburn, McCarthy.

Q. How long have you resided in Alaska?

A. For the last ten years.

Q. When did you come to Alaska?

A. Ten years ago,—the spring of 1904.

Q. When did you first go into the Nizina country?

A. In the spring of 1907.

Q. When did you first consider going in there?

A. In the spring of 1907.

Q. Where were you at that time?

A. In Seattle.

Q. With whom did you first take up the proposition of going in?

A. With my brother, J. E. Fagerberg.

Q. What did he say to you in that connection?

A. He wanted to know if I would take up a proposition of running a store in *at* Nizina for him and Carstens under a wage agreement. I told him I would if it was a satisfactory proposition to me.

Q. Did you make any positive agreement when

(Testimony of H. M. Fagerberg.)

you were in Seattle? A. No, there was not.

Q. He was coming to Alaska at that time, was he not? A. He was, yes, sir. [19—2]

Q. On what business, other than this, if any?

A. Cattle.

Q. And you came along with him? A. Yes, sir.

Q. What do you mean by cattle? What was he doing with these cattle?

A. He was to take them into the Kennecott mines and along the trail on the way in there, different people—anywhere that he could sell them.

Q. These were live cattle? A. Yes, sir.

Q. And you accompanied him from Seattle and along the trail? A. Yes, sir.

Q. Where did you first make any positive agreement as to going into this store at Chittitu or Nizina?

A. On the Kotsina River, crossing the Copper.

Q. Tell the circumstances of that, if you will.

A. At that time he expected to go through with those cattle to the Kennecott mines, dispose of them there and then go on and look the Nizina proposition over, to see the condition of things there, but when he got to the Kotsina, he was informed he couldn't dispose of the cattle at Kennecott and along the line and it was up to him to go back with the cattle, so he made the proposition to me there on a wage agreement of \$1,500 a year, if I would go in there and look after it and run it for him and Mr. Carstens. I was also to have a third interest in any ground I located there for them.

Q. What kind of ground?

A. Placer ground or any other mineral ground—

(Testimony of H. M. Fagerberg.)

besides I had the right to do any outside work as long as it didn't interfere with my work in connection with the store. [20—3]

Q. What about the pay you were to receive from this outside work?

A. That was mine, that was my own. At the same time my money—it was understood then that I was to leave my money, let them have the use of it; I was to give them a reasonable time to use the money.

Q. In other words you were not to demand your pay immediately?

A. No, I was not to demand my pay immediately.

Q. Was there any specific time in which you could not demand it? A. No, there was not.

Q. Who was running this store at Chittitu?

A. Aleck Wilson was keeper.

Q. Whose store was it? Under what name was it being conducted? A. The Nizina Trading Company.

Q. Did you ever learn who owned the Nizina Trading Company?

A. My understanding was that it was Mr. Carstens and Meyers.

Q. Now, in this agreement you made with your brother J. A. Fagerberg, was there any agreement that you were to share in any of the profits of the business? A. There certainly was not.

Q. If they had made a million dollars in there, you couldn't have claimed any of it? A. No, sir.

Q. How about the losses?

A. They were to share them the same way.

(Testimony of H. M. Fagerberg.)

Q. You were to get your wages irrespective of any profits or losses?

A. My wages were guaranteed.

Q. Who guaranteed them?

A. My brother guaranteed them.

Q. For himself alone? [21—4]

A. My understanding of it was, it was for himself and Mr. Carstens.

Q. How long did you continue in the employ there of your brother and Mr. Carstens at Chittitu?

A. At Chittitu from August first, 1907, until along in the winter of 1910.

Q. Did you ever receive any of your salary for any of this time?

A. Not anything, only for my clothes and actual expenses and they were very small.

Q. That is, you took your clothes out of the store?

A. Yes, I took my clothes out of the store.

Q. Do you know what that amounted to, in all these years?

A. During that time, as long as I was over there, my actual expenses wouldn't amount to more than five or six hundred dollars.

Q. Did you keep an itemized account of those expenses for the time you were at Nizina?

A. I did.

Q. Did they ever pay you any money on your salary up to 1910?

A. Not any actual cash, no, sir, only as I say; I had some dental work and one thing and another like

(Testimony of H. M. Fagerberg.)

that done here on trips to Valdez; that was paid by them.

Q. How did you come to make these trips to Valdez, on your own business?

A. Business for them, pertaining to the business—freighting in supplies and one thing and another of that sort.

Q. How often did you come to Valdez during this time? A. Once.

Q. This was the time you had the dental work done?

A. This was the time I had the dental work done.

Q. What did that cost? Do you recollect about what it cost? A. I think it was \$23. [22—5]

Q. And you say you stayed at Chittitu until the fall or winter of 1910, is that true? A. Yes, sir.

Q. What time did you leave Chittitu Creek itself?

A. I left in the latter part of September and during the winter of 1910 I would make regular trips over there from Kennecott, every week or every two weeks.

Q. In your absence from Chittitu, who was conducting the store over there?

A. There was no one there at all.

Q. There were very few people in there that winter—at that time? A. Very few.

Q. Where did you go then, in the fall of 1910?

A. Went to Kennecott, Blackburn.

Q. How far is that from Chittitu?

A. Practically twenty miles.

Q. Kennecott and Blackburn are near the end of

(Testimony of H. M. Fagerberg.)

the Copper River & Northwestern Railroad?

A. Yes, sir.

Q. This was before the railroad was constructed you went over there? A. Yes, sir.

Q. What did you do at Kennecott and Blackburn?

A. It was preparatory work for putting up a building—logging, getting out logs and laying the foundation—preparatory work.

Q. Did this contract made with J. A. Fagerburg in the fall of 1907 still continue?

A. It was still in force.

Q. Was there any supplementary contract by which you were to have any interest in this business at Blackburn? [23—6]

A. There was not—there was nothing of the sort whatever.

Q. And did you put up a building there?

A. Yes, sir.

Q. State to the jury what this Blackburn road-house and works there generally consist of?

A. The house itself consists of fourteen rooms upstairs, a dining room and a kitchen, well-equipped, downstairs and a large lobby, besides a sitting room and a store room on one side and a wareroom on the other, and a dormitory on the third floor, and there is a barn, a story and a half practically, with storing room for nineteen horses; a blacksmith-shop, just an ordinary 14x16 building, well equipped and other outbuildings.

Q. Did you put all these buildings up in the winter of 1910 and 11?

(Testimony of H. M. Fagerberg.)

A. In the spring of 1911 we started the actual construction of the buildings.

Q. Are they log buildings?

A. They are.

Q. Who helped put them up?

A. Myself and Leschamps and another man, I forget—Lindquist.

Q. Where was Al Fagerberg during this winter?

A. He made one trip in there in December, I think it was, and the balance of the time he was in Seattle, in the spring—he was there during the winter.

Q. During the years that you were at Chittitu, was Al at Chittitu very much?

A. Just made trips in there occasionally.

Q. How often would he come in?

A. He would come in in the spring and sometimes during the summer.

Q. Did he bring in any extra stock in the spring for the store? A. Yes, sir.

Q. Did he bring in any extra stock in the winter and spring of [24—7] 1908?

A. In the spring, yes, sir.

Q. And 1909? A. Yes, sir.

Q. And 1910? A. Yes, sir.

Q. Every spring? A. Every spring, yes, sir.

Q. And sometimes he would bring cattle in, in the summer? A. Yes, sir.

Q. And sell them to the operators there?

A. Yes, sir.

Q. Did you ever make demand on Al for your wages during all these years? A. I did.

(Testimony of H. M. Fagerberg.)

Q. Frequently? When did you make your first demand?

A. The first demand I actually made, that is, a serious demand, was in the fall of 1910.

Q. What did he say then? Did he pay you?

A. No, he did not.

Q. Go ahead.

A. I asked him—I had the money; I had practically \$3,800 in my possession then, and I told him I wanted my money. “Well,” he says, “after I put you in here and give you a chance to make this money, you are going to pull it out and give me and Carstens no chance at all, when there is a chance to make some money.”

Q. And the upshot of it was, you turned the money over to him and didn’t hold it out?

A. I didn’t hold the money out of him,—I stayed with him. [25—8]

Q. And when did you next make a demand on him for your wages? A. It was in the spring of 1913.

Q. Are you sure it was 1913?

A. 1912 I believe it was.

Q. Did he pay you any money then?

A. He did not.

Q. Just tell what occurred at that time if anything in this connection?

A. Things were coming very good for him and things didn’t look good to me and I went to him and demanded my money. Well, he says, he didn’t have it and couldn’t pay me. I went after him pretty strong. Well, he said, it didn’t do any good,

(Testimony of H. M. Fagerberg.)

he didn't have it and couldn't pay me and the consequence was it wound up in a rumpus, a free-for-all.

Q. In other words, you had a personal combat?

A. Yes, sir.

Q. At any rate, you didn't get any money?

A. I didn't get any money, no, sir.

Q. Did you enter into any other agreement between yourselves at that time or soon after that time as to wages, which in any way modified the first agreement? A. Yes, sir.

Q. Tell the jury what that was and all about it.

A. At that time it seems they were in debt to Blum & Company and Mr. Brock came up there and tried to adjust the difficulty and make things satisfactory for everyone and there was a contract drawn up at that time where I was to get \$4,000 on my wages within six months, I think it was, as near as I can recollect, in different payments. Besides I was to get same bench claims staked on Chittitu by myself—I was to get free title to them. [26—9]

(By the COURT.)

Q. What was the date of this latter agreement?

A. This was 1912.

Q. What time of the year?

A. It was in the spring.

By the COURT.—I might say to the jury as we go along, if any of you desire to ask any questions at any time to clear up a matter or understand it fully as you go along, you may do so.

Mr. RITCHIE.—I think part of this is inadmissible,

(Testimony of H. M. Fagerberg.)

but I think probably it is better to let Mr. Fagerberg tell his entire story.

Direct Examinaation (Continued).

(By Mr. DIMOND.)

Q. At this time as I understand you, you agreed that you had \$4,000. coming to you, and whatever was advanced, that you put into these bench claims on Chittitu and upon demand, he couldn't pay it at that time and you agreed to wait a while longer?

A. Yes, sir.

Q. What about your wages?

A. From that time on, I was to get \$100 per month.

Q. That is, you reduced it a little? A. Yes, sir.

Q. Who was present when this settlement was made with you? A. Mr. Brock.

Q. Who is Mr. Brock?

A. He is manager for S. Blum & Co., Cordova.

Q. Was it he who drew up this greement?

A. Yes, sir, it was.

Q. Do you know where that agreement is now?

A. I don't know where it is—I have lost the agreement.

Q. Have you made a search for it? [27—10]

A. Yes, sir.

Q. And cannot find it? A. No, sir.

Q. Was this agreement as to wages between you ever modified after that time?

A. No, sir, it was not.

Q. That continued how long?

A. Well, it continued until the spring of 1913.

Q. Did Al pay you any moneys under this agree-

(Testimony of H. M. Fagerberg.)

ment for wages, any of that \$4,000, any time later?

A. No, he did not.

Q. Did you ever make a demand for it?

A. Yes, sir.

Q. And what was his reply?

A. Well, he said, in the fall of 1913 that he couldn't do anything with it, but would go out and take the matter up with Mr. Carstens and see what he would do and if Carstens wanted to pay me my wages—

Q. When was this? A. In the fall of 1913.

Q. Are you sure? A. 1912 rather.

By the COURT.—Fix the time if you can.

The WITNESS.—Why, it was in the fall of 1912.

Q. Go ahead and tell your story.

A. And he said he would take the matter up with Mr. Carstens and if Mr. Carstens wanted to protect me and pay my salary, why he would settle it that way, but if he couldn't do that, why he was to turn the business over to me—if Mr. Carstens didn't want to do that, why the business was to come to me.

[28—11]

Q. For what? A. For my salary.

Q. What do you mean when you say the business?

A. Well, the roadhouse and what the business consisted of there.

Q. Did it consist of the roadhouse and barns?

A. The roadhouse and barns and pack horses and equipment.

Q. Furniture?

A. Furniture and whatever there was around the place of business.

(Testimony of H. M. Fagerberg.)

Q. When did you next hear from Al about this?

A. It was along in July.

Q. What year? A. 1913.

Q. What did he say—did he write to you himself?

A. He did not, not himself.

Q. How did you get word from him then?

A. From George Custer.

Q. Who is George Custer? A. An attorney.

Q. Where does he live? A. In Seattle.

Q. What kind of information did you get from him?

A. Well, he says—it seems that Al had taken the proposition up with Carstens and couldn't do anything and he got instructions from my brother to turn the property over to me and he was to prepare the papers, send them out to me.

Q. What papers did he send you?

A. Bill of sale, powers of attorney and one thing and another.

Q. I now hand you an instrument dated the 15th day of July, 1913, signed by J. A. Fagerberg and ask you what that is?

A. It is a bill of sale from my brother to myself for the property [29—12] at Blackburn and Nizina.

By the COURT.—Does that include the store and stock of goods?

The WITNESS.—There was no stock of goods there.

By the COURT.—When did you discontinue the store business?

(Testimony of H. M. Fagerberg.)

A. When my brother went out; when the lease was made to Breedman and Church.

Mr. DIMOND.—There were some goods at Chittitu?

A. Yes, there were some goods at Chittitu,

By the COURT.—Who was running that business?

A. There was no one there at that time—Mrs. Cole was up there prior to that time.

By the COURT.—This stock of goods then at Nizina does not enter into this case at all, does it?

Mr. DONOHOE.—No, sir.

By the COURT.—All that is involved in this case is the roadhouse, with the furniture and equipment around the roadhouse?

Mr. DONOHOE.—Yes, sir, and five head of horses.

Mr. RITCHIE.—The property is all at Blackburn that is sued for in this action.

Mr. DONOHOE.—Yes, the property is all at Blackburn that is sued for in this action. This is introduced to show the matters that led up to it.

The Bill of Sale is marked Plaintiff's Exhibit "B" (Exhibit "A" being part of the complaint) and read to the Jury by Mr. Dimond, as follows:

[Plaintiff's Exhibit "B"—Bill of Sale.]

KNOW ALL MEN BY THESE PRESENTS,
That J. A. Fagerberg, the party of the first part, for and in consideration of the sum of four thousand five hundred (\$4,500.00) dollars, lawful money of the United States of America to him in hand paid by [30—13] H. M. Fagerberg, the party of the second part, the receipt whereof is hereby acknowledged,

do by these presents grant, bargain, sell and convey unto the said party of the second part, his executors, administrators and assigns, a certain house with the appurtenances located at Mile 192, Copper River & Northwestern Railroad, District of Alaska, with the lease of the ground upon which the same is situated; furniture and equipment, all outbuildings and other structures in connection therewith; also 7 head of horses, harness and equipment, blacksmith shop, barn, also store at Nizina, Alaska, with contents and equipment, including fixtures; also outstanding accounts, and all personal property in the District of Alaska belonging to party of the first part—

TO HAVE AND TO HOLD the same to the said party of the second part, his executors, administrators and assigns forever. And I do for my heirs, executors and administrators, covenant and agree to and with the said party of the second part, his executors, administrators and assigns, to warrant and defend the sale of the said property, goods and chattels hereby made unto the said party of the second part, his executors, administrators and assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 15th day of July, in the year of our Lord one thousand nine hundred and 1913,

J. A. FAGERBERG. (Seal)

Signed, sealed in presence of

GEORGE A. CUSTER.

State of Washington,
County of King,—ss.

This is to certify that on this 15th day of July, A. D. 1913, before me the undersigned a notary public in and for the State of Washington, duly commissioned and sworn, personally came J. A. Fagerberg, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal]

GEORGE A. CUSTER,

Notary Public in and for the State of Washington,
Residing at Seattle. [31—14]

No. 1706. Filed for Record by J. A. Fagerberg at 5 P. M. Aug. 9, 1913. Recorded in Vol. 7, page 184, Chitina Recording District, Territory of Alaska.

PAUL d'HEIRRY,

Recorder.

Q. What did you do with that paper when you got it?

A. I sent it to Chitina to have recorded.

Q. Your place is in the Chitina recording precinct?

A. Yes, sir.

Q. The consideration recited therein as appears by that instrument is \$4,500—is that the true consideration for the transfer? A. Practically, yes.

Q. When you say practically, was the real con-

(Testimony of H. M. Fagerberg.)

sideration any more or any less?

A. Why it would be a little more, to get down to the fine points.

Q. What do you mean by that, why would it be more?

A. Well, my time, if I was allowed for expenses since the agreement was made—I figured that is what I actually had coming.

Q. Did you have more money than that coming at that time from J. A. Fagerberg, July 15, 1913?

A. Yes, I think I did.

Q. How much more?

A. It was practically about \$500 more than that, —practically \$800.

Q. \$800 more than is stipulated there— then that would be \$5,300? A. \$5,300 that I had coming.

Q. Was there any encumbrance on the roadhouse at that time? A. Yes, sir, there was.

Q. Do you know how much it amounted to—at the time this bill of sale was made how much was due and unpaid on it?

A. I looked it up after it was turned over to me; the mortgage [32—15] was \$2,600 if I recollect right still due at that time.

Q. In whose favor was this mortgage?

A. Blum & Company.

Q. Did you go into actual possession of this property at that time?

A. To this extent, that I notified Church that I was in possession of the building, the building belonged to me and I was still in possession of the

(Testimony of H. M. Fagerberg.)

horses, in the packing end of it.

Q. Who was Church?

A. He was the man running the roadhouse at that time under lease from my brother.

Q. When did your brother execute this lease on the roadhouse, do you know?

A. In the fall of 1913, I think it was, some time along there.

Mr. DIMOND.—I want to ask the witness whether or not he is not mistaken—

The WITNESS.—1912, I mean.

Q. And at that time, then, in the fall of 1912 your brother executed a lease to Church? A. Yes, sir.

Mr. RITCHIE.—If they have the lease, we should like to have it offered.

Mr. DIMOND.—We have the original lease.

Q. State whether or not this is the lease you have reference to—examine it first. (Handing witness paper.)

A. Yes, sir, that is the lease I have reference to.

Q. I don't see the name of Church there; instead of that there is the name of S. O. Breedman—can you state who S. O. Breedman was?

A. He was a partner of Church's as near as I understand. At the [33—16] time I notified Church, Breedman was not there—he was in the Shushana.

Mr. DIMOND.—I will offer this lease in evidence.

The lease is admitted in evidence, without objection, marked Plaintiff's Exhibit "C" and read to the jury by Mr. Dimond as follows:

Plaintiff's Exhibit "C" [Lease].

This Indenture, made this 16th day of November, 1912, by and between J. A. Fagerberg, of Kennecott, Alaska, lessor, and S. O. Breedman, of Cordova, Alaska, lessee, witnesseth:

That, for and in consideration of the rents, covenants and agreements hereinafter specified, to be paid, kept and performed by the said lessee, the said less hereby does demise and let unto the said lessee, for a term of three years from and after the 20th day of November, 1912, with the option of renewing this lease and extending said term for an additional term of two years thereafter upon the same terms, whose certain premises situated and described as follows, to wit:—The Blackburn Road House situated near mile 192 of the Copper River and Northwestern Railway, heretofore operated as a roadhouse by Fagerberg Brothers, together with all the furniture and fixtures situated and being therein and used in connection with said roadhouse business; also all out-houses situated upon said premises and used in connection with said business, save and except the horse barn and the blacksmith shop, it being understood and agreed that the said lessee shall have the use of one-half of said horse barn during said term, or until such time as the said lessor shall have built a barn upon said premises for the use and occupancy of said lessee. And the said lessor further agrees to furnish the necessary logs and to construct an addition to said roadhouse 20 by 28 feet in dimensions, one story high, and to fully complete the same, the said lessee to furnish all materials therefor except the logs to

be furnished by the lessor; and said addition shall be completed as soon as the weather conditions will permit, not later than the 1st day of January, 1913, the said lessee yielding and paying therefor, as rental, the sum of two hundred dollars per month, payable in advance on the —— day of each and every month during the continuance of said term and any renewal thereof under the terms hereof, it being understood and agreed that the last three months' rental together with the rental for the first month shall be paid upon the enſealing of these presents, and that no further payment for the last three months of said term, or if a renewal is had, for the last three months of such renewal, shall be required of or made by said lessee.

And the said lessee hereby promises and agrees to pay said rentals at the times and in the manner above and hereinafter stipulated, and to keep said premises in good repair, as at present, reasonable wear and tear thereof being considered and allowed. [34—17]

And it is hereby stipulated and agreed by and between said lessor and said lessee: that all rentals to be paid by said lessee, except those paid upon the execution of this lease, shall be paid by said lessee to the bank of S. Blum & Company, at Cordova, Alaska, for the purpose of being applied upon a certain note and mortgage made by said lessor to said S. Blum & Company, upon said leased premises, until said note and mortgage are fully paid and satisfied. And this understanding shall be considered as one of the essential conditions of this lease and be binding upon the parties hereto, the said lessor and said

lessee. The said lessor hereby covenants and agrees to keep said premises insured in a reliable insurance company in the sum of at least Three thousand dollars, and the policies of insurance shall be deposited in the bank of S. Blum & Company, said insurance being intended for the protection of all of the parties hereto and of said S. Blum & Company, mortgagee, as their respective interests may appear at the time any loss covered by such insurance may occur. And the said lessor further agrees to warrant and defend the said lessee in the peaceable and undisturbed possession of said premises during the term of this lease, against the claims of all and every person lawfully claiming or to claim the same.

The said lessor, for the considerations herein named and of the sum of one dollar to him in hand paid, hereby gives and grants unto the said lessee an option to purchase the above-described and leased premises, at any time during the term of this lease or any extension thereof, for the sum of nine thousand dollars, as the full purchase price thereof, payable at the time of sale, and that any rentals that may have been paid by said lessee shall be applied upon said purchase price of nine thousand dollars, that is to say, the said lessee shall pay said sum of nine thousand dollars, less any sum he shall have paid as rentals under this lease. Provided, however, that if said option to purchase shall be exercised by said lessee at any time after the expiration of eighteen months from the commencement of this lease, the said lessee shall pay to said lessor, in addition, as purchase price, interest on the amount remaining to be paid, at the rate of eight per cent per

annum for the then unexpired time of the lease, and if the lease shall have been extended by renewal, for the unexpired time of such renewal. This option shall not include the barn to be erected by said lessor.

In Witness Whereof, the said parties hereto have hereunto set their hands and seals this 17 day of November, 1912.

Witnesses:

J. Y. OSTRANDER,

S. BLUM.

J. A. FAGERBERG. (Seal)

S. O. BREEDMAN. (Seal) [35—18]

United States of America,
District of Alaska,—ss.

On this 18th day of November, 1912, before me, a notary public in and for the District of Alaska, personally appeared the within named J. A. Fagerberg, to me well known to be the same person described in and who executed the within instrument and acknowledged to me that he freely and voluntarily for the uses and purposes therein specified, executed the same.

Witness my hand and official seal the day and year in this certificate above written.

[Seal]

GEORGE DOOLEY,

Notary Public.

For and in consideration of the agreement contained in the foregoing lease, that the rentals accruing and to be paid by the lessee of the premises therein described shall be paid to S. Blum & Company, of Cordova, until the note and mortgage held by said S. Blum & Company against said premises

(Testimony of H. M. Fagerberg.)

shall be fully paid and discharged, the said S. Blum & Company hereby consent to the making of said lease. It being understood, however, that any failure to pay said rentals as in said lease provided shall release and absolve the said S. Blum & Company from said consent, and restore the right to proceed against said premises as if this consent had not been given.

Dated the 18th day of November, 1912.

S. BLUM & CO.

By S. Blum,

President and General Manager.

Q. Now, when Al gave you this bill of sale in July, 1913, either Church or Breedman was still in possession of the roadhouse under the lease to Breedman?

A. He was, yes, sir.

Q. And you say you gave Church a notification that you were the owner of that property?

A. I did, yes, sir.

Q. How long did Breedman & Church, or Breedman, hold these premises after that time, after July, 1913?

A. From that time until the first of March, practically the first of March, 1914.

Q. At whose instance was the lease thrown up?

A. My brother and myself. [36—19]

Q. Under the terms of the lease it continued for a considerable length of time longer did it not?

A. Yes, sir, it did.

Q. Did Breedman & Church agree to it?

A. Before my brother came up to McCarthy, during the winter of 1914, 1913 and 14, they were about

(Testimony of H. M. Fagerberg.)

to give the roadhouse up, but I went to them and made arrangements with them to the effect that they were to stay until the first of June, 1914, but my brother came up during this time, along in February of 1914 and made me a proposition of taking the business back, over again, on an incorporation plan and at that time he stated his plan to me and his proposition and I consented to it under certain arrangement and a certain contract and I told him then the condition that I had made with Church and I said, if you want to you can go down there and talk with Church and perhaps he will give you possession of it; now, that is the way of my brother taking charge of it the first of March; the lease and contract shows for itself, the way he got possession of it.

Q. Then on the first of March you leased the place to your brother? A. I did, yes, sir.

Mr. DIMOND.—We desire to offer this paper in evidence. (Handing a paper to Mr. Ritchie.)

Mr. RITCHIE.—We object to this on the ground that it is irrelevant to the real issue in the case and it is incompetent because it is not signed by the party or either one of the parties that is to be charged with it, and amounts to a self-serving declaration. The signatures are J. A. Fagerberg, Thomas [37—20] Carstens, by J. A. F. and H. M. Fagerberg, and unless there is some authority shown for J. A. Fagerberg to bind Thomas Carstens or the Carstens Packing Company, it can have no binding effect upon Thomas Carstens or the Carstens Packing Co. It is incompetent and irrelevant and a self-serving declaration.

(Testimony of H. M. Fagerberg.)

By the COURT.—You will have to follow it up by some proof of the authority to sign Carstens' name.

Mr. DONOHOE.—We do not hope to bind Carstens by that paper.

Mr. RITCHIE.—Even then it is a self-serving declaration.

By the COURT.—The objection will be overruled. It will be admitted and the jury will be instructed at the proper time as to the effect of it.

To which ruling of the Court counsel for defendant except and the exception is allowed.

Q. I herewith hand you a paper, dated the 23d day of March, 1914, and ask you to state what it is.

A. It is an agreement drawn up between myself and brother concerning the arrangements and the property.

Q. Where? A. At Blackburn.

The agreement is marked Plaintiff's Exhibit "D" and read to the jury by Mr. Dimond, as follows:

Plaintiff's Exhibit "D" [Agreement].

This agreement made and entered into this 23d day of March, 1914, by and between J. A. Fagerberg, Mgr., the party of the first part, and H. M. Fagerberg, the party of the second part, both of Blackburn, Alaska, Witnesseth:

That, Whereas, J. A. Fagerberg and Thomas Carstens have entered into an agreement of partnership, pending the incorporation [38—21] of a company to engage in the business of General Merchandise and Transportation at McCarthy, Blackburn, Nizina and Shushana, Alaska, and being desirous of en-

gaging the services of H. M. Fagerberg as packer and of leasing certain buildings and renting certain personal property owned by the said H. M. Fagerberg—

Therefore, It is now agreed by and between the parties hereto that the said H. M. Fagerberg does hereby rent and lease to the said J. A. Fagerberg and Thomas Carstens, partners, the following described property, to wit:

Ten head of horses at \$2.00 per day.

The Fagerberg Roadhouse at Blackburn, Alaska, together with all the personal property therein contained, at the monthly rental of \$150.

The Fagerberg store, connected with said Roadhouse together with the fixtures and show cases therein contained, at the monthly rental of \$50.00.

The Chititu store and roadhouse at the monthly rental of \$25.00.

The service of the said H. M. Fagerberg to be performed in sledding and packing to such places as are considered advisable by the said J. A. Fagerberg, Manager, and to be paid for at the rate of One Hundred Dollars per month.

The duration of this lease shall be six months unless sooner terminated by the organization of the aforementioned corporation, which said corporation is to be formed on the following basis: The capital stock to be \$50.00, of which stock H. M. Fagerberg is to receive 7,000 shares par value \$1.00 per share. On receipt of which stock H. M. Fagerberg agrees to deed all of the above described property to said corporation and which stock so received by the said H. M. Fagerberger, the said J. A. Fagerberg agrees

(Testimony of H. M. Fagerberg.)

to purchase at par [39—22] value on or before
September 1st, 1914.

J. A. FAGERBERG,
THOS. CARSTENS.

By J. A. F.

H. M. FAGERBERG.

Witness:

L. A. DAMON.

By the COURT.—At this time the jury will be instructed that the only purpose for which this exhibit “D” which has been introduced and read to the jury is admitted in evidence is to determine and relative to the question of ownership of this property as between J. A. Fagerberg and H. M. Fagerberg and so far as the name of Carstens appears in it, you will not consider that at all unless it further be shown by the evidence in this case that there was authority given by Mr. Carstens to enter into this agreement or to sign his name to any such paper; that so far as the recital in there that Carstens has entered into an agreement with J. A. Fagerberg is concerned, you will disregard that until it is shown by some competent evidence here that Mr. Carstens authorized such an arrangement. The only effect of this paper just read to you is, so far as it may aid you in determining whether J. A. Fagerberg or H. M. Fagerberg was the owner of this property.

Q. Who drew that instrument?

A. Mr. Foster.

Q. Who is Mr. Foster?

A. He is an attorney who was located at Chitina, but at present he is at McCarthy.

(Testimony of H. M. Fagerberg.)

Q. Where was the instrument drawn up?

A. At the roadhouse.

Q. Did he write that himself? [40—23]

A. He wrote that himself.

Q. It is in his handwriting?

A. Yes, sir, it is in his handwriting.

Q. Now, when did Al Fagerberg really go into possession of this property under this agreement?

A. I think it was the fourth day of March, 1914, he took possession.

Q. Why did you delay, then, in drawing up the agreement in writing?

A. There wasn't any attorney there and Mr. Foster happened to come up at that time from Chitina and I thought it a good opportunity to have an agreement drawn up and I had him do it at that time.

Q. Mr. Foster was not there on the fourth of March? A. No, sir, he was not.

Q. You never got the stock mentioned in this bill of sale? A. Never did, no, sir.

Q. Were you in the employ of J. A. Fagerberg from that time on? A. Yes, sir.

Q. What were your duties?

A. Most of the time I was carrying mail, packing and handling horses.

Q. Did you ever receive any of the rents or any of your wages mentioned under this contract?

A. I never did, no, sir.

Q. How long did you continue in the employ of J. A. Fagerberg?

A. About the first of August, I think it was.

Q. What caused the discontinuance?

(Testimony of H. M. Fagerberg.)

A. The attachment of goods in the store—that was the direct cause of it.

Q. Describe that attachment; tell what goods were attached and when. [41—24]

A. Why, it seems as if Mr. Carstens sent up a supply of goods to my brother—I suppose he knew the conditions, he sent it up himself and advanced him money; I don't know why he done it but he done it, and it seems as if they got fighting and quarreling between themselves about the stock.

Q. Where were you when the first attachment took place?

A. I was at Chititu when the first attachment was taking place.

Q. When did you arrive at Blackburn thereafter?

A. I arrived there that evening that the attachment was taken on the merchandise.

Q. Did you claim any of this merchandise?

A. I did not, no, sir.

Q. What date was this?

A. I think it was the second day of August.

Q. On the second day of August, who did the attaching? A. Jim Millsap, the deputy marshal.

Q. On the second day of August Mr. Millsap, the deputy marshal, attached the store—

A. Just the store.

Q. Containing these goods which belonged to your brother or to his creditors—anyway they didn't belong to you? A. They didn't belong to me, no, sir.

Q. This agreement which we have just read here in evidence, when was that terminated?

A. At that time; my brother says, "I can't do any-

(Testimony of H. M. Fagerberg.)

thing," and he says, "There is no use for me trying"; he says, "I will give it up"; he says, "You can take it and do what you please with it," and I went ahead and ran the business.

Q. Did he continue in possession of the roadhouse? A. No, sir. [42—25]

Q. Who did have possession?

A. I did myself.

Q. When was this?

A. This was on the evening of the second day of August when I returned.

Q. He turned the whole business over to you?

A. He turned the whole business over to me.

Q. And did you again continue to conduct it from that time on? A. Yes, sir, I did.

Q. When did the next attachment take place on the property up there?

A. The next day, I believe; I wasn't there then. I made another trip to Chititu, but I believe Millsap—my understanding of it is—he came the next day and attached the warehouses alongside the main building with some goods in them that he had not attached before.

Q. Did these goods belong to you?

A. No, sir, they did not.

Q. When did the next attachment take place?

A. I believe it was on the 8th day of August.

Q. Where were you at the time?

A. I was at the roadhouse working. He came up—

Q. Who did?

A. Millsap and his deputies—he had three depu-

(Testimony of H. M. Fagerberg.)

ties with him—and he said he had an attachment for the whole concern, buildings and horses and everything, he said they had to go ahead and serve an attachment. I said, “Do you know what you are doing”? “Yes,” he says, “I thoroughly understand what I am doing.” “Well,” I says, “I won’t give up possession, you will have to put me out.” “Well,” he says, “If that is necessary, I will do that,” and I says, [43—26] “Go ahead and do it,” and he took me by the shoulders and led me out. I told him, also, about the bill of sale and his deputies so they could see what they were doing exactly and they knew what they were doing at the time.

Q. Where were you at the time?

A. I was in the roadhouse.

Q. And he put you outside the door?

A. He put me outside the door, yes, sir.

Q. Did you tell him that that property was yours?

A. I told him that belonged to me.

Q. Where were they at that time?

A. They came in that evening; they were in the barn.

Q. What did he do with the horses?

A. He took possession of them; took them down to Breedman’s barn.

Q. Did you tell him the horses belonged to you?

A. I did.

Q. In whose possession was all this property at the time the attachment was made?

A. The possession of the property of the roadhouse, that was in my possession; of course, I don’t

(Testimony of H. M. Fagerberg.)

claim any of the stock of goods that were shipped in there by my brother or Mr. Carstens.

Q. What about the horses?

A. I claim the horses; the horses were mine.

Q. Were they in your possession at the time the attachment was made? A. They were; yes.

Q. How many horses were there? A. Five.

Q. Were these horses that were turned over by your brother, Al Fagerberg, and recited in the bill of sale of July 15, 1913? [44—27]

A. Two of them were and three of them were not.

Q. How did you come into possession of the other three? A. I bought them myself.

Q. And Al Fagerberg never owned those three horses?

A. Never did, never had nothing to do with them.

Q. From whom did you buy them?

A. I bought two from Mr. Seagraves, superintendent of the Kennecott mine and one from a fellow named Brooks.

Q. When?

A. In the fall of 1914, in the summer—one of them I bought in the summer, August.

Q. This attachment was made in August, 1914?

A. I mean 1913.

Q. What is the value of that roadhouse up there, I mean now only the store-house building and the buildings attached to it?

A. The roadhouse itself is worth about \$3,000. The barn is worth about a thousand and the outer buildings, blacksmith-shop and cow-barn and one

(Testimony of H. M. Fagerberg.)

thing and another like that are worth about \$200 or \$250.

Q. (By Juror). What is the size of the road-house?

A. It is in an L shape; the front part of it is 38 ft. by 20 and the back L is 22 by 32.

Q. (By Juror). Two stories?

A. Two stories and a garret, that is, a bunk-room.

Q. Does that include the store-room and warehouse alongside—does this property you have just described run along on each side of the main building? A. In front there is a story, one story.

Q. How large are these buildings?

A. Why, they are about—the store-room, that is, the selling-room, [45—28] as near as I can recollect, it is 20 by 28.

Q. And the other one? A. Is 18 by 28.

Q. Are all these buildings log buildings?

A. Practically, yes. The store building alongside the main building is lumber.

Q. Boards? A. Boards.

Q. Now, you say all these buildings you have just described here are worth \$3,000. How large is this barn?

A. The barn is 30 by, I think it is 48—I am not just positive on that point.

Q. What is it constructed of?

A. Logs; the upper part of it is lumber.

Q. How high is it, one story or two?

A. Practically, a story and a half.

Q. And a loft upstairs?

(Testimony of H. M. Fagerberg.)

A. And a loft upstairs; yes, sir.

Q. What other buildings have you around there?

A. A blacksmith-shop.

Q. What did you say the value of that was?

A. About \$100.

Q. Was there any furniture in the roadhouse at the time of this attachment—at the time the roadhouse itself was attached, the part you claim?

A. Yes, sir.

Q. Do you claim that you were in possession of that furniture at this time? A. Yes, sir, I was.

Q. What do you say was the value of that property?

A. In the neighborhood of \$2,000. [46—29]

Q. What does it consist of?

A. Well, there is the hotel equipment, such as bedding, general furniture that it takes to furnish up a place.

Q. Stoves?

A. Stoves, cooking utensils, a complete line of store fixtures, such as that.

Q. In other words, you had a completely equipped roadhouse there?

A. Yes, I had a completely equipped roadhouse there.

Q. How many guests could you accommodate?

A. There were fourteen rooms and upstairs there was something like 16 bunks, I think.

Q. How much are those horses worth that were attached by Millsap?

A. Well, they were worth to me \$200 a head.

(Testimony of H. M. Fagerberg.)

Q. And there were five of them? A. Yes, sir.

Mr. RITCHIE.—We move to strike that former answer.

By the COURT.—Yes, the question is what the horses were worth at that time and place.

The WITNESS.—If I had to buy horses at that time I would have to pay \$200 a head.

Q. Were horses very plentiful in the country at that time?

A. No, sir; not at that time—there was a good demand for horses at that time.

Q. Why?

A. It was packing season and the business was at hand.

Q. Did you have any other property there attached by the marshal that you claim?

A. The Chititu building.

Q. That doesn't enter into this suit. Was there any furniture in the barn?

A. Yes, there was a packing equipment and harness. [47—30]

Q. Any sleds? A. Sleds, wagons.

Q. What was the value of all that packing equipment, etc.?

A. The total would be about a thousand dollars, I should judge.

Q. That is practically all of the property that was attached by the marshal and which you claim?

A. Yes, sir.

Q. This blacksmith-shop—will you repeat what you said was the value of that?

(Testimony of H. M. Fagerberg.)

A. The building itself was practically worth about \$100.

Q. Were there any tools in there which went into this \$100? A. No, the tools would be extra.

Q. How much would you say was the value of those tools? A. Perhaps, \$75.

Q. Mr. Fagerberg, how much profit could you have made out of that Blackburn roadhouse during August and September, 1914?

Mr. RITCHIE.—We object to that unless he follows it up by definite figures showing in what way he could make it.

Judge LYONS.—If he is laying a foundation on which he bases his damages, he will have to show what he would make on each article.

By the COURT.—You can cross-examine as to that. Objection overruled. Defendants allowed an exception.

Q. Now, so far as the roadhouse and barn is concerned, inasmuch as it is part of the roadhouse, what would have been your profit there in the months of August and September, 1914, out of the roadhouse alone, not including these horses?

Mr. RITCHIE.—We object on the ground that the way the question is put, it would be testimony simply as to profits that are wholly speculative. [48—31]

By the COURT.—I think it is merely an opinion as to what he might do; I think you ought first to lay some foundation by showing what business he was doing and what the conditions were and how

(Testimony of H. M. Fagerberg.)

they remained or how they have been since that time. The objection will be sustained.

Plaintiff allowed an exception.

Q. What were the business conditions at that roadhouse at that time?

A. At the time I got this roadhouse—

Q. When was that?

A. That was the second of August—they were beginning to be good—naturally would be as a consequence of the state of the country. It is the packing season for the Chititu country and the Shushana country; the travel is good going into the Shushana and into the Chititu country; the travel is naturally heavy at that time of the year and the business in good.

Q. Was the business good at this time?

A. It was; I was working the horses and the business was good.

Q. How about the roadhouse?

A. There was a good business there.

Q. How many guests did you have there on the average?

A. At the time that the attachment was made on the roadhouse, there were five guests that were on hand that day, that had been staying there right along, steady guests, right along.

Q. And sometimes you had a great many more?

A. The house full.

Q. And sometimes you had none?

A. Sometimes I had none.

Q. Can you give an off-hand opinion as to the aver-

(Testimony of H. M. Fagerberg.)

age for the month, the number of guests that were there?

A. Not the exact number but on the average I could have made [49—32] \$300 per month clear of all expenses.

Mr. RITCHIE.—We move to strike that answer as not responsive. Objection sustained and answer stricken.

By the COURT.—Answer the question, about how many guests and about what they paid.

Q. About how many guests on an average did you have there?

A. Well, up to that time I don't think they would average over—that is, steady guests—they would average over six or eight.

Q. You say that business conditions at that time of the year usually improve?

A. They certainly would—they improve from that until along the latter part of October.

Q. And did they improve this particular year, 1914? A. They did; yes, sir.

Q. What are your profits per day on each guest that you had there? A. You mean clear?

Q. Yes, above the expense?

A. It would be about \$2.50.

Q. \$2.50 above all expense—what are your prices up there? A. A dollar for a room, 75¢ for a bunk.

Q. And what did you charge for a meal?

A. A dollar.

Q. In other words, a man staying all day and all night, you charge him \$4.00? A. Yes, sir.

(Testimony of H. M. Fagerberg.)

Q. How much of that would be profit?

A. I will change that, it wouldn't be \$2.50—it would be, practically, \$2.00 profit.

Q. You say during the month of July or about the time this attachment [50—33] was made, to be more exact, you think the average of your guests on or about that time was about seven or eight?

A. Yes, sir.

Q. And you made \$2.00 on each guest?

A. Yes, sir.

Q. And that the conditions in there last fall were such that you would have continued to have had about the same number of guests each day and make the same profit off of each one?

A. It would have been more; the business would have been better.

Q. You wouldn't make as much money as that along in the winter, would you? A. No, sir.

Q. How are business conditions up there in the month of November, we will say?

A. Along in November—

Mr. RITCHIE.—We object to this kind of questioning—it is nothing on which to base an action for damages. You have to show it by actual figures. This is too speculative.

Objection overruled. Defendants allowed an exception.

Q. What were the business conditions, so far as that roadhouse was concerned, in November last?

A. You mean the possibility of the business or the actual conditions of business?

(Testimony of H. M. Fagerberg.)

Q. The business was closed up, but what were the reasonable possibilities of the business? You were there all winter? A. Yes, sir.

Q. You were there in November? A. Yes, sir.

Q. And you know how much travel went through there at that time?

A. Naturally, along in November, the travel is not as heavy as [51—34] it is in August or September—the heavy travel is over.

Q. When does the heavy travel end?

A. The latter part of October.

Q. Along in November, then, there is very little travel? A. Not much travel.

Q. What about the month of December?

A. It is quiet, continues quiet, until along the first part of February.

Q. And from that time on it improves?

A. It begins to improve again.

Q. Now, had you remained in possession of that roadhouse, and knowing the conditions of business generally at McCarthy and the possibilities of this roadhouse business, what would you say would have been the average number of your guests during the month of November, 1914?

Judge LYONS.—We make the same objection, it is too speculative and too general.

Objection overruled and exception allowed.

Mr. RITCHIE.—I will object to any further testimony for the reason that Mr. Harry Fagerberg has already testified that there was a lease from him to Al Fagerberg, by which he was to receive so much

(Testimony of H. M. Fagerberg.)

rent; he also testified that Al Fagerberg gave up on the first of August on account of the attachment. Now, then, that brings about this situation that if the attachment which he is complaining of in this action had not been levied, he would not have been handling the roadhouse for himself and making two dollars a day on the guests, but simply drawing the rent Al Fagerberg agreed to pay him and we object to any testimony as to any profits he could have made running that roadhouse. [52—35]

Mr. DONOHOE.—The evidence shows it was thrown up four days before this attachment was made.

By the COURT.—That is my recollection of the testimony. The objection will be overruled and exception allowed.

Mr. DIMOND.—Answer the last question. Please read it, Mr. Reporter.

Question read as follows:

Q. Now, had you remained in the possession of that roadhouse, and knowing the conditions of business generally at McCarthy and the possibilities of this roadhouse business, what would you say would have been the average number of your guests during the month of November, 1914?

Judge LYONS.—We renew our objection.

Objection overruled and exception allowed defendants.

A. Well, perhaps three, straight through.

Q. November? A. Yes, sir.

Q. What about December?

(Testimony of H. M. Fagerberg.)

A. Practically run about the same.

Q. It would run the same all winter?

A. Until about the first of February.

Q. Then it would improve?

A. Yes, then it would improve again.

Q. How are conditions up there in the spring at McCarthy, in a business way, quiet?

A. Quiet to a certain extent; yes, sir.

Q. Do you think that the average number of guests you have named would have continued up to the present time?

Mr. RITCHIE.—We object to that as leading and suggestive.

Objection sustained. [53—36]

Q. How many guests do you think there would have been between the first of February and this date at the Blackburn roadhouse?

A. That is a rather hard question to answer but on an average, take it as a whole, why I should say about 120 guests per month, straight through on an average.

Q. Four a day? A. Yes, sir.

Q. What profit was being made off of the horses, off each horse, at the time the attachment was made?

A. Practically, three dollars per day.

Q. How long did that business continue?

Mr. RITCHIE.—Before there are any more questions about the horses I want him to tell what the horses were doing, who was handling them and from what he derived compensation for those horses.

Mr. DIMOND.—Answer that.

(Testimony of H. M. Fagerberg.)

The WITNESS.—I was handling them myself; they were doing a packing business to Chititu and Dan Creek.

Q. What were you packing over?

A. General freight and merchandise for Esterly and the Dan Creek Mining Company, and different people over in that section of the country.

Q. How much did you charge a pound?

A. Seven cents, flat rate, to Esterly and the Dan Creek Mining Company.

Q. How much of a pack train were you running at that time?

A. At that time I had eight horses.

Q. How many men did it take to handle them?

A. Myself, part of the time, once in a while, and Henderson.

Q. How many men does it take to run a pack train of eight horses? [54—37]

A. Two men; one man can do it on a pinch.

Q. What is your average pack horse over there?

A. 225 pounds.

Q. How long did it take to make a trip over to Chititu and Dan Creek and back?

A. She takes three days.

Q. In other words, every three days you take eight horses with 225 pounds each, that would be 2,000 pounds or 1,800 pounds, rather, and you say you got for that seven cents per pound?

A. Yes, sir.

Q. That would be \$126. Now, what is the wages of those two men, what is the ordinary rate of wages in there?

(Testimony of H. M. Fagerberg.)

A. \$100 per month. And, besides, we always pick up more or less packing coming back from the creeks that we usually get ten cents per pound for, bedding and blankets of the men and ferrying men across the river.

Q. The Nizina River has a ferry across it?

A. Yes, sir.

Q. It is a bad river to ford? A. Yes, sir.

Q. Did you have steady packing at the time the attachment was made?

A. Yes, sir, it was certainly steady packing, in fact the marshal came to me and got my permission and I gave my consent,—horses were so scarce and they were so hard up—I hired the horses from the marshal, you might say, for \$3.00 per day—that is what I was to get clear of them; that money is in the hands of the marshal at the present time.

Q. That was after the attachment?

A. That was after the attachment; the horses were so scarce and it had to be done before any arrangements could be made [55—38] with other parties to take the packing. Breedman has done the packing since, during those months.

Q. What months do you refer to?

A. August, September and October.

Q. All of October?

A. The biggest part of October.

Q. Up to the 20th, anyway?

A. Yes, up to the 20th, anyway.

Q. Now, did you have an opportunity during the past winter to make other money had you been in

(Testimony of H. M. Fagerberg.)

possession of this property you speak of and the horses? A. Yes, sir; I certainly would have.

Q. State what it is.

A. Contract with the Kennecott Mines Company for mining timbers and logging.

Q. What profit have you been deprived of by reason of this wrongful taking away of your horses?

A. I could have made practically \$2,000 clear on the piling contract, the timber contract.

Mr. RITCHIE.—We move to strike that unless he goes into detail, it is only an opinion.

Motion granted—answer stricken.

Q. What was this timber contract that you speak of?

A. Well, the Kennecott Mines Company advertised for bids on a certain amount of timber.

Q. How much was it? A. It was 50,000 feet.

Q. What kind of timber? A. Mining timber.

Q. What is mining timber? What is its general size and description— [56—39] what kind did they want, in other words?

A. From seven to twelve inches in diameter and 16 to 32 feet long.

Q. They wanted 50,000 feet of them?

A. Yes, sir.

Q. How much would it have cost you a foot to get that timber?

A. It would cost me about 3½ cts.

Q. How much were they willing to pay for it?

A. Six and a half cents.

Q. In other words, you could make three cents a foot? A. Yes, sir.

(Testimony of H. M. Fagerberg.)

Q. (By JUROR).—Is that linear feet or board measure? A. Linear feet.

Q. Fifty thousand linear feet of timber?

A. Yes, and that was increased to one hundred thousand.

Q. (By the COURT.) What were these horses doing that they couldn't do that work the same as they did packing in the summer?

A. They were tied up in the hands of the marshal.

Q. How did they become untied, so that they were able to do this packing?

A. There was a bond put up by Mr. Seagraves; Mr. Seagraves stood good for it, the Kennecott Mines Company.

Q. Where are the horses now?

A. They were sold.

Q. When?

A. Along in February, if I recollect right, 1915—I am not positive on that point, what month they were sold.

Q. Who sold them, do you know?

A. The marshal sold them.

Q. Were you particularly well qualified to get out this mining timber you speak of? [57—40]

A. Yes, sir.

Q. How?

A. The year before I and my partner had gotten out logs, one hundred and fifty thousand feet. We built roads through all the timber to get these logs and that left us in a good condition to handle this contract, on account of these roads being cut and the smaller logs left, what would answer the purpose for

(Testimony of H. M. Fagerberg.)

these mining timbers; and also under normal conditions, if I hadn't been tied up the way I was, I would have had the horses, sleds and equipment and the camp established down there to go ahead, after I was through with the packing—take the horses down there and put them to work in the woods getting out the timbers and getting out logs; and also there is 200 cords of wood that I could have kept right on with.

Q. As a result of these things that you have just testified to, what would you say was the total damage by reason of being deprived of those horses from the 20th day of October until the present time?

Judge LYONS.—We object to that; he must show each particular place he was damaged.

Mr. DIMOND.—I ask him to base his opinion on the items he has mentioned and this logging contract particularly.

Objection overruled; defendants allowed an exception.

A. On the mining and logging I could practically have made \$5,000.

Q. How long would that logging have lasted?

A. It could have lasted all spring, up until the packing set in.

Q. How much was there of it, did you say?

A. There was one hundred thousand feet of mining timbers.

Q. You mentioned something about cord wood—what was that? A. That was for the mine.

Q. How much? [58—41]

A. Two hundred cords.

Q. How much would that cost you to get it out?

(Testimony of H. M. Fagerberg.)

A. I wouldn't have made so much on that, but would have made practically about one dollar a cord clear—that is all I could have made on that,—that is allowing \$2.50 per day for the horses.

Q. Now, you figure it—100,000 feet of timber you say you could have made three cents per foot on; that is \$3,000 and \$200 on wood, and you state you could have made altogether \$5,000—where is the rest of it?

A. On account of the logging proposition—I was getting under my agreement with Borger and Struck \$2.50 per day for every day I put in getting out logs.

Q. Where were these logs used?

A. At the Borger-Struck mill.

Q. Where is that?

A. Mile 123 on the Copper River Railway.

Mr. DIMOND.—That will be all at this time.

Cross-examination by Mr. RITCHIE.

Mr. RITCHIE.—I want briefly to go over your testimony that you gave to Mr. Dimond in regard to your first arrangement in there, in the Nizina store, to be sure I have it right.

Q. As I remember your testimony, you went in there in the summer of 1907. A. Yes, sir.

Q. And you took charge of the store—

A. The first of August, 1907.

Q. And your arrangement was that you were to receive \$1,500 per year and keep, of course, I suppose? [59—42] A. Yes, sir.

Q. You were baching? A. Yes, sir.

Q. The \$1,500 was clear of your board, but any clothing or anything else you used were charged against you? A. They were, yes, sir.

(Testimony of H. M. Fagerberg.)

Q. And was it your understanding from Al that he and Carstens were in partnership in that?

A. Yes; and another thing, I was present on the steamboat at Seattle at the time he left Seattle when Myers came down and delivered the deed for this over to Al; that is the only time I knew anything of the transaction between Myers and Al and Carstens, and, naturally, hearing their conversation which was carried on in the cabin of the boat, why that was what I was basing my knowledge on of the conditions in there.

Q. Myers delivered the deed from the Nizina Trading Company to J. A. Fagerberg?

A. That was my understanding of it, yes, sir.

Q. Did you see the deed at that time?

A. Yes, sir.

Q. Was it afterwards filed?

A. That is my understanding of it, but I suppose the records will show.

Q. So your understanding was that you were working for Thomas Carstens and J. A. Fagerberg?

A. That was my understanding of it.

Q. And on that arrangement you started in on the— A. First of August, 1907.

Q. And you worked for about three years under that arrangement? A. Yes, sir. [60—43]

Q. And you also had a further arrangement that you could have some time to yourself—that is, you said something about locating property?

A. Why, yes, that was taken into consideration; after I got in there at Nizina, we made the final arrangements there, that I was to look out for any

(Testimony of H. M. Fagerberg.)

opportunity for locating mineral ground, placer ground or quartz or anything else, and if I should locate any of that, I was to have a one-third interest.

Q. And who was to have the other two-thirds?

A. I suppose Al and Carstens.

Q. You were not told positively about that?

A. No, sir.

Q. You had no instructions?

A. I had no instructions in regard to that; and another thing, during the winter months we understood it was quiet there and it was my understanding and my permission if I had any opportunity to make any money, as long as it didn't interfere with my work at the store, I should do this work and have the money and pocket it myself.

Q. The arrangement about mining was made on account of the fact that you would undoubtedly have some spare time? A. Yes, sir.

Q. And it was thought that your relations with Al Fagerberg and Carstens entitled them to some interest in what you did? A. That's the idea, exactly.

Q. Now, you worked constantly for about three years at the roadhouse? A. Yes, sir.

Q. And you say that you were in Seattle only once during that time? A. Once, yes. [61—44]

Q. And did you go to Cordova then?

A. I went through Cordova.

Q. You staid pretty steadily at the store and on the creeks?

A. Yes; at the time I went to Seattle I went through Cordova.

Q. You made one trip to Seattle, and then you

(Testimony of H. M. Fagerberg.)

went through Cordova? A. Yes, sir.

Q. When was that trip to Seattle?

A. In the fall of 1909.

Q. When you had been working there two years?

A. Yes, sir.

Q. Do you remember the month you quit the store in 1909?

A. I left the store in Chititu, I think, the latter part of September; of course, during that whole winter I made regular trips over there once a week practically.

Q. You were still in charge of the store?

A. I was still in charge of the store until along in the spring, until the spring outfit came in; I helped freight the spring outfit that went into Chititu—over there myself.

Q. Was there anyone in charge of the store all the time when you were gone?

A. No, it was closed when I was not there, and I had a notice on the door that I would be in on a certain day—that was the custom of the country.

Q. In the fall of 1910, you went at something else?

A. Yes, sir.

Q. You went to logging, I believe, you said?

A. I did, yes, sir.

Q. That was for the purpose of getting out logs to build the Blackburn roadhouse, I understand?

A. Yes, sir; and another thing, we got out logs—
[62—45]

Q. Who do you mean by we?

A. My brother and myself; I naturally say we since I was connected with the business and working

(Testimony of H. M. Fagerberg.)

there, Sam Rogers and myself; that is the way I put it; he was the man working with me, cutting these saw logs. We cut practically 80,000 feet of saw logs and hauled them to the mine, hauled then in the winter and they were out on shares by the Kennecott Mines Company, and half of them, half the lumber—it was divided.

Q. Divided between whom?

A. The Kennecott Mines Co. and my brother and myself.

Q. The purpose of that logging was to obtain lumber for the—

A. For the construction of the roadhouse.

Q. Did you go back at any time to run the Nizina store?

A. No, sir; not after the spring of 1911.

Q. You never were in active charge of the store for any length of time after you quit in the early fall of 1910?

A. No, sir; not while it was in operation.

Q. You stated that you worked around at different things during 1911—a good part of the time you were working on building the Blackburn roadhouse?

A. Yes, sir.

Q. And what time was that finished?

A. It was finished along in the fall; we started to build, the actual construction of the building, in the spring of 1911 and the barn and outbuildings, and it was finished in the fall, towards the fall.

Q. When did the railroad come through there?

A. It was in the spring of 1911, just about the time we started in to build the roadhouse.

(Testimony of H. M. Fagerberg.)

Q. You finished the roadhouse so it was ready for occupancy about August or September? [63—46]

A. Well, we were occupying the roadhouse along in the first part of June, 1911,—that is, the furnished part of it.

Q. But it wasn't completed until late in the summer? A. No.

Q. You were about to use a part of it?

A. Yes, sir.

Q. What did you do in the winter of 1911 and '12?

A. General work, freighting and any work that was to be done connected with the roadhouse.

Q. You worked around the roadhouse mostly?

A. Sometimes, and sometimes I worked anywhere where there was work to be done.

Q. Freighting? A. Freighting and packing.

Q. Where did you freight?

A. Out to the creeks and done some work for the Kennecott Mines Company, driving a team there.

Q. Did you or your brother have a mail contract at that time?

A. My brother had a mail contract at that time, I believe.

Q. What mail contract has he had up there?

A. He had the first contract that was let from McCarthy to Nizina.

Q. What year was that?

A. That was in 1911, I think it was 1911—1912, when the first contract was let.

Q. And he still had a contract last year?

A. Yes, sir.

Q. It was a four-year contract, made in 1910?

(Testimony of H. M. Fagerberg.)

A. No, a yearly contract, as far as I understand it; in 1913 I had a mail contract myself.

Q. From McCarthy to Chititu Creek? [64—47]

A. Yes, sir.

Q. Did you work in the roadhouse a good deal or mostly on the trail freighting?

A. Most of the time after the construction of the roadhouse I put in with the horses, working on the trail, freighting.

Q. That would be the fall of 1911, and all along through 1912? A. Yes, sir.

Q. Did you continue that kind of employment through most of 1912? A. Yes, sir.

Q. And in 1913?

A. And in 1913, practically the same.

Q. You have done more freighting than anything else for the last two or three years?

A. Yes, sir; I have.

Q. Did you work in the Blackburn roadhouse very much? A. No, not to any great extent.

Q. That wasn't your principal employment?

A. That wasn't my principal employment, no.

Q. When you were not on the trail you helped?

A. When I was not on the trail I helped some, yes, sir.

Q. You were not, however, for any length of time charged with the responsibility of it? A. No, sir.

Q. You testified a while ago that you drew \$125 per month until things got a little dull, until the spring of 1912 some time,—about the time you had a little trouble with Al over finances, and then you agreed to take \$100 a month? A. Yes, sir.

(Testimony of H. M. Fagerberg.)

Q. You had been working for Al steadily at \$125 per month up to that time? [65—48]

A. Yes, sir, only this one trip that I was out to Seattle—there was one trip I wasn't there.

Q. You didn't draw wages for that time?

A. I didn't draw wages for that time, no, sir.

Q. At the time you quit the store, or practically quit it, in the fall of 1910, how much was due you for back salary—at the time you say you quit the roadhouse and went into the logging camp—how much was due you for back salary at \$1,500 per year?

A. Well, there was practically \$4,500.

Q. When you left that work at the Chititu store, when you quit spending all your time at the Chititu store, which was about August or September, 1910—how much was due then for wages or salary?

A. Probably \$4,000.

Q. Then you had received practically nothing during those three years?

A. No, practically nothing.

Q. You had been working for your board, as far as receiving anything was concerned?

A. That's the fact, yes.

Q. Didn't you state a minute ago that your personal expenses would be about \$500 or \$600 a year?

A. No, I don't think I did.

Q. You had about \$4,000 coming? A. Yes, sir.

Q. Now, you were working for Al when you worked in the logging-camp and built the roadhouse at Blackburn? A. Yes, sir.

Q. You had no interest in that?

A. No, sir. [66—49]

(Testimony of H. M. Fagerberg.)

Q. And when you accepted a reduction in salary to \$100 per month in the spring of 1912, you were still working for Al? A. Yes, sir.

Q. When you were working at the Chititu store from 1907 to 1910, your understanding was that you were working for J. A. Fagerberg and Thomas Carstens?

A. Practically, as I understood the conditions between Al and Thomas Carstens.

Q. And for whom were you working when you quit the Chititu store and went out to the logging-camp—were you still working for Thomas Carstens?

A. Practically, under the same agreement in force.

Q. And during all of 1911 then, when you were working on the construction of the Blackburn road-house and in the fall of that year, including 1912 when you freighted on the trail, you considered that you were still working for Thomas Carstens?

A. I certainly did.

Q. You understood that there was a sort of general partnership between J. A. Fagerberg and Thomas Carstens in the business that J. A. Fagerberg was doing in the Nizina country?

A. Something to that effect, yes, sir. The way I understood it, at the time the Carstens Packing Company held a bill against the old Nizina Trading Company and at the instigation of the Carstens Packing Company this was turned over to Al—that is my understanding of it; that was the way it was explained to me.

Q. And you were still working for J. A. Fagerberg

(Testimony of H. M. Fagerberg.)

and Thomas Carstens, or the Carstens Packing Company, as the case may be?

A. As the case may be, yes, sir; I don't know how the situation stood exactly; that is the way it was explained to me at the time.

Q. At what time? Until what time? [67—50]

A. Until 1913.

Q. Until you got this bill of sale? A. Yes, sir.

Q. The latter part of the summer of 1913?

A. Yes, sir.

Q. And your understanding was that you were working for Thomas Carstens in the freighting?

A. Yes, sir.

Q. And in the roadhouse? A. Yes, sir.

Q. And in the construction of the roadhouse?

A. Yes, sir.

Q. Did you see Mr. Carstens when you were in Seattle in 1909? A. I did not, no, sir.

Q. Did you hunt him up?

A. No, sir; I did not.

Q. Did you have any correspondence with Mr. Carstens or the Carstens Packing Company about your work up there? A. I never did.

Q. At the time you quit working at the Chititu store and when getting out logs for the Blackburn roadhouse, your idea was that Mr. Carstens was to be interested in the Blackburn roadhouse?

A. The same principle would apply there; in fact I demanded my money in 1910, before I went over there, and, as I explained before, I agreed to stay by the proposition with them—my wages were still in the business.

(Testimony of H. M. Fagerberg.)

Q. At that time you had about \$3,800 in your possession? A. I had that, yes, sir.

Q. Which you could have held out under your contract? [68—51]

A. Which I could have held out under my contract and stuck it into my pocket.

Q. And instead of that, in order to help along the business, you staid right with it, and allowed Al Fagerberg to use it? A. Yes, sir.

Q. And you never went to see Mr. Carstens or said anything to him about it? A. I never did.

Q. You got uneasy about your money?

A. I got uneasy about my money, yes.

Q. Did it ever occur to you to write Mr. Carstens to ask him how far he was backing Al in the business he was doing?

A. It never occurred to me, never thought of it.

Q. At the request of Al, you left the \$3,800, which was in your possession and which you could have retained, if it was due and owing to you, you left it at his request and went working for him and did work for him for nearly a year in the construction of the roadhouse and still had \$4,000 due you—didn't you consider it worth while to ask Mr. Carstens, write him and ask him if he was interested in the roadhouse?

A. It didn't strike me that way, no sir.

Q. You have stated there was \$4,000 due you?

A. Al was handling that and they could talk that over themselves; I might have gone further with Al than I would with anyone else, naturally would.

Q. But you became quite dissatisfied, according to

(Testimony of H. M. Fagerberg.)

your own statement, in the spring of 1912—so much so that you and your brother had a serious disagreement? A. Yes, sir.

Q. But you continued to work for Fagerberg and Carstens for more [69—52] than a year after that without ever writing to Mr. Carstens and asking him whether he was back of it?

A. Why, no, of course I didn't; it never entered my mind. I understood the proposition and Al was handling that end of it for him. They never took the trouble to consider me; I was dealing with Al and he was representing them.

Q. When did you quit working for Al Fagerberg and Thomas Carstens?

A. When the deed was delivered over to me.

Q. When the deed was sent up by George Custer?

A. Yes, sir.

Q. Who mailed that to you? A. George Custer.

Q. He sent it to you? A. Yes, sir.

Q. And what did you do with it?

A. I put it on file and recorded it at Chitina.

Q. This is signed only by J. A. Fagerberg—you noticed that at the time? A. Yes, sir.

Q. And you sent it to Chitina to be recorded, did you? A. I did.

Q. This is already in evidence? A. Yes, sir.

Q. Did you ever notice this certificate on it when it was returned? A. Yes, sir.

Q. Filed for record by J. A. Fagerberg at 5 P. M. August 9, 1913—that was an error?

A. I suppose it was, on the part of Mr. d'Heirry.

Q. Did you write a letter to Mr. d'Heirry about it?

(Testimony of H. M. Fagerberg.)

A. Yes, I wrote a letter at the time. [70—53]

Q. Saying, enclosed you will find a deed for record, etc.? A. Yes, sir.

Q. How did you sign that letter, H. M. Fagerberg?

A. Yes, sir.

Q. And it was his mistake? A. Yes, sir.

Q. There is no chance that George Custer did that direct from Seattle?

A. There is no possible chance at all. I took the deed and showed it to Mr. Church and I delivered the power of attorney to Mr. Brock and it is still in his possession.

Q. Your business in the store was principally selling goods—I believe you testified you had almost exclusive charge of the store at Chititu?

A. At Chititu, I did, yes, sir.

Q. And what books of account did you keep?

A. We kept a day-book, slips of sale and transactions and a cash-book.

Q. A daybook and slips—did you make slips and enter them in the day-book in the evening?

A. No, sometimes I kept just slips; sometimes I had an old book I kept the sales in.

Q. And then you had a cash-book? A. Yes, sir.

Q. Did you keep any personal account with the company? A. To a certain extent, yes, sir.

Q. Have you a book in which from time to time, or each month, you entered up a charge from \$125 due on your salary and on the other side any goods you took out of the store?

A. No, sir; I didn't keep it that way. [71—54]

Q. You never kept any such record?

(Testimony of H. M. Fagerberg.)

A. No, sir; I believe there is one or two entries of that kind, that is all; my brother started it out that way for me. I am not a bookkeeper, and don't pretend to be, and I didn't keep it up.

Q. Had you ever had any experience in a store before? A. No, sir, never had.

Q. You had been mining and engaged in other business before that? A. Yes, sir.

Q. Are there any books which were kept in the store while you were in charge there here in the city, in possession of Mr. Dimond?

A. Yes, there is one.

Q. Just one book? A. Just one book.

Mr. RITCHIE.—We should like to have all books of record, showing the accounts of the Chititu store from 1907 to 1910.

Q. Now, how much was due you at the time you accepted this bill of sale in the summer of 1913? How much was due you on salary from J. A. Fagerberg and the Carstens Packing Company?

A. Practically \$5,600—under this last agreement, you understand.

Q. You had been drawing some money from time to time? A. Yes, for general expenses.

Q. Had you ever drawn any money and invested it in livestock? A. No, sir.

Q. Or in mining or any kind? A. No, sir.

Q. You owned no livestock up to the time you got this bill of sale from Al? A. No, sir.

Q. Did you own any personal property of any kind, besides your personal effects? [72—55]

A. No, sir.

(Testimony of H. M. Fagerberg.)

Q. Any mining tools, or sleds, or wagons, or dogs, or anything of that kind? A. No.

Q. From time to time when you were running the Chititu store, didn't you and your brother give grubstakes to various miners? A. Why, yes.

Q. That was part of the understanding possibly with Mr. Carstens that miners were to be grubstaked?

A. Yes, I believe they were, as far as that goes; I never had much to do with that part of it.

Q. You had no interest in those grubstakes?

A. No, sir.

Q. And never received any returns from any of them? A. No, sir.

Q. Now, in 1913, when you took over this property, what work were you employed in, after August, 1913, after this bill of sale, how did you occupy your time—in the fall of 1913 and *and* part of 1914?

Q. During the fall and summer of 1913—during the fall of 1913 I was taking care of the horses and I built a building alongside of this present building, a saloon for Breedman & Church, but I was looking after the horses in general; the road was tied up during that winter and I had to make a trip to Valdez here for horses, feed and one thing and another like that—general care of the horses and looking after the horse business.

Q. You didn't own any property of consequence then until this bill of sale was made in July, 1913?

A. No, sir.

Q. And that bill of sale was made to you to make

(Testimony of H. M. Fagerberg.)

you whole [73—56] on the back salary you had coming? A. Yes, sir.

Q. What were these freighting contracts that you worked on while you were working for your brother and as you assume for Carstens in 1911 and 1912? You stated that some of them were for the Kennecott Mines Company and some of them were carrying mail and some carrying supplies for Kernan and Esterly in Chititu Creek? A. Yes, sir.

Q. And probably for other mining operations?

A. Yes, sir.

Q. It was general freighting?

A. It was general freighting, yes, sir.

Q. And all those freighting contracts were taken by Al Fagerberg? A. Yes, sir.

Q. None by yourself? A. No, sir.

Q. You had no interest in it?

A. No; I might have taken a contract for Al. I knew the general run of the business and might have done that.

Q. When you had the difference with Al in 1912—where was that? A. At the Blackburn roadhouse.

Q. The principal cause of the row was Mrs. Damon, was it not?

A. No, sir; that is supposition.

Q. Now, in the summer of 1913, you knew that your brother J. A. Fagerberg, was having, as he had had for a year, difficulty with his wife, and she had sued him for divorce? A. I knew of it.

Q. What time did Al go out in 1913?

A. Along about the first part of November. [74—57]

(Testimony of H. M. Fagerberg.)

Q. Wasn't he out in the summer of 1913?

A. No, sir.

Q. Wasn't he in Seattle at the time the bill of sale was executed in July, 1913?

A. Yes, I beg your pardon on that—he went out in the fall of 1912; he was out during that time.

Q. He went out about the time or shortly after he made the lease to Oscar Breedman?

A. Yes, sir, that is the time he went out.

Q. And that lease is dated—

A. November, 1912.

Q. The lease is dated the 16th of November, 1912 and Al went out shortly after that?

A. Yes, sir.

Q. The possession of the roadhouse was given to Breedman at that time? A. Yes, sir.

Q. And afterwards Breedman and Church, if they were not in partnership at the time it was executed, they entered into a partnership shortly after?

A. Yes, sir.

Q. Did you have anything to do with the roadhouse that winter? A. No, sir.

Q. Now, the roadhouse was turned back in the spring of 1914? A. Yes, sir.

Q. That was just after Al came up from the outside? A. Yes, sir.

Q. While Al was out in the spring of 1913, did you know anything about what he was doing below by correspondence?

A. No, I did not; I wrote him two letters jacking him up about [75—58] it, as the time was drag-

(Testimony of H. M. Fagerberg.)

ging along; I was only supposed to stay there a month; he was supposed to have the thing straightened out by the first of the year but he didn't and it dragged along and I wrote several letters in regard to it, but he seemed to drag it along and didn't come through with his agreement with me until the first of July.

Q. There was talk between you, I believe you testified, about your having a settlement—he would go down and see the Carstens and try to get the thing straightened up? A. Yes, sir.

Q. Did he go down to see Mr. Carstens and see if he could get further credit and supplies?

A. Not that I know of; I didn't see why he should do it—he wasn't running the store.

Q. While you were running the store at Chititu, didn't you advertise as Fagerberg Brothers in the newspapers?

A. It was advertised as Fagerberg Brothers, yes, sir.

Q. There was an ad carried in the Valdez paper for two or three years or more as Fagerberg Brothers?

A. I don't know how long it was running—I saw the ad myself, yes.

Q. Who put that advertisement in, do you know?

A. I don't know who put it in.

Q. You never ordered it in?

A. I never ordered it in.

Q. Do you know who paid the bills for it?

A. I did not—No, I do not.

Q. Did you ever pay any?

(Testimony of H. M. Fagerberg.)

A. Not to my recollection.

Q. You never remitted to the Prospector Publishing Co. anything to pay for the ads in 1911 or 12 or along there? [76—59]

A. Not to my recollection, I did not.

Q. Do you know how long the ad remained in the paper? A. No.

Q. You don't know as a matter of fact that it remained there until the first of September, 1913?

A. No, I don't know that—I never paid any attention to it.

Q. You are not responsible for the ad being in the paper?

A. I am not responsible for the ad being in the paper.

Q. But you saw it? A. I saw it, yes, sir.

Q. Did you ask Al if he put it in?

A. It never occurred to me, never thought of it. The way that was, when I went into Chititu, the name of Carstens and Myers, they couldn't do business in there because their name was so damned rotten, and I was running the store there, between me and my brother—I was running it there and it naturally drifted into Fagerberg Brothers. We had a pretty fair reputation and were doing things on the square.

Q. And you don't know how the ad of Fagerberg Brothers got into the paper? A. No, I do not.

Q. And you have no recollection of ever remitting to the "Prospector" to pay for it?

A. I may have paid some bill—I don't recollect it.

(Testimony of H. M. Fagerberg.)

Q. When you were down here to see the dentist?

A. That was in 1908, I think it was—1909, in the spring of 1909.

Q. You are sure you didn't put the ad in the paper yourself? A. I never did, no, sir.

Q. Who paid the bills of the roadhouse, the ordinary expense bills—I mean the Chititu store?
[77—60]

A. The main bills were always paid by Al, my brother; sometimes a small bill, or anything like that, I would pay.

Q. Additions were made to the stock of the store from time to time? A. Yes, sir, they were.

Q. And where did you make those purchases usually? A. Most of them came from the outside.

Q. You know how they came in, don't you?

A. Yes, sir.

Q. You know from whom you bought? Wouldn't there be a tag or stamp on it showing whom they were from? A. Yes, sir.

Q. State some of the people from whom the Chititu store bought goods in 1908, 9 and 10, along there, when you were running the store?

A. Some were bought in the spring of 1908—some were bought from Blum here, a little.

Q. Whom did the bills for them come to—J. A. Fagerberg or Fagerberg Brothers?

A. I couldn't say, I don't know.

Q. You don't remember? A. No, sir.

Q. You had billheads printed Fagerberg Brothers?

(Testimony of H. M. Fagerberg.)

A. There were billheads printed Fagerberg Brothers, yes, sir.

Q. Didn't you use to sign the firm name to bills and receipts? A. I did at times, yes, I don't deny it.

Q. Why did you do that if you were not in partnership?

A. To protect the Carstens Packing Co. as well as myself, because as I stated before, it had naturally drifted into that—the papers had it as that and I signed it just because the heading was that way and I think I had a right to sign it that way because [78—61] every one, Mrs. Damon and Henderson, signed it the same way.

Q. Did you ever receive any request from the Carstens Packing Co. to protect them?

A. They admitted themselves and satisfied themselves that it couldn't be run in their own name and their own testimony shows it.

Q. When did they do that?

A. At the time it was turned over to Al.

Q. When you were running that in your own name, you ordered goods sometimes?

A. Very little ordering I done.

Q. Al did all the buying?

A. Yes, sir, Al did all the buying—I didn't have anything to do with it.

Q. You say the Carstens Packing Co. had a bad reputation in there? A. They certainly did.

Q. Didn't you take a long risk to work for Thomas Carstens for six years, if he had a bad reputation, without writing to him and asking him when he was

(Testimony of H. M. Fagerberg.)

going to pay you?

A. Perhaps I did, but at the time I went in there, I didn't know the people I was dealing with as I do now.

Q. You say they had a bad reputation at that time?

A. I was taking other peoples' word for that, I hadn't found it out; I have to be shown first and when I am shown, I know it.

Q. These are some of the letterheads that you used there (handing papers to witness)?

A. Yes, I guess they are, they have that appearance.

Q. There is a bunch of bills given to Jim Hall in the summer of 1911 for goods bought there and on each one of them is a receipt signed H. M. F. or H. M. Fagerberg—that is your handwriting? [79—62]

A. Some of them are and some are not.

Q. The signatures H. M. F. or H. M. Fagerberg are in your handwriting? A. Yes, sir.

Q. Look at them and see if some of them are not?

A. Here is one that is not; that is J. A.'s; this is Al's; two of them are my own, that I signed myself.

Mr. RITCHIE.—I would like to offer these in a bunch, but some are signed by Al.

Mr. DONOHOE.—We object to the introduction of the exhibit on the ground that none of the bills are receipted as Fagerberg Bros. The witness has admitted that there were billheads printed as Fagerberg Brothers, but these receipts are not signed Fagerberg Brothers and therefore do not tend in any

(Testimony of H. M. Fagerberg.)

manner to show the partnership, beyond what the witness has already admitted—that he did use billheads and had the heading on them as Fagerberg Brothers. These are all receipted by either J. A. or H. M. Fagerberg and in no case are they receipted Fagerberg Bros. We have no objection to the billheads. We admit they used such billheads and also billheads of the Nizina Trading Co.

By the WITNESS.—Those billheads did not come in until the spring of 1910.

Mr. DONOHUE.—Our objection is that they are incompetent, irrelevant and immaterial.

Objection overruled and exception allowed plaintiff.

The papers are marked Defendants' Exhibit 1* and admitted in evidence.

Q. You say you did not do any buying for the Chititu store? A. Nothing to speak of.

Q. Did you do any for the Blackburn roadhouse at any time?

A. Sometimes—along in the spring of 1911, I believe, I ordered a little at times there. As long as I was around the house [80—63] and was building the house, I ordered some.

Q. How would you order those, in whose name?

A. I don't recollect.

Q. Did you order anything in Fagerberg Brothers name? A. I might have, yes, sir.

Q. How did you order them, in the name of Fagerberg Bros., when you worked for Tom and J. A. when

*See Stipulation at page 437 of record.

(Testimony of H. M. Fagerberg.)

you worked for Tom Carstens and J. A. Fagerberg?

A. We used the firm name Fagerberg Bros. to keep the Carstens name out of it, that was the extent of it.

Q. Whose handwriting is that? (Handing witness letter.) A. My own.

Q. Is that your signature?

A. Yes, sir, I can explain the circumstances of that if you want it.

Mr. RITCHIE.—I wish to offer it in evidence. It is a letter dated at Blackburn, Alaska, May 8, 1913, addressed to Schwabacher Bros. & Co. Ins., signed Fagerberg Bros. Per H. M. Fagerberg. We offer it in evidence as evidence of the partnership existing at that time between the two Fagerbergs.

Mr. DONOHOE.—We object to the introduction of the exhibit in evidence on the ground that it is incompetent, irrelevant and immaterial.

By the COURT.—There is a clearcut issue in this case raised by the pleadings as to whether or not they were partners and this is some evidence directed to that question. * * * It is a question for the jury here to determine whether or not J. A. Fagerberg and H. M. Fagerberg were partners and I think it is material on that question. It is admitted for the same reason as any other admission on the part of either one would be that they were in fact partners.

Plaintiff allowed an exception. Letter marked Defendants' Exhibit [81—64] 2 and admitted in evidence. Mr. Ritchie reads it to the jury as follows:

Defendants' Exhibit No. 2 [Letter].

Blackburn, Alaska, May 8, 1913.

Schwabacher Bros. & Co. Inc.

Gentlemen: Find Enclosed check for One hundred and Nine Dollars (\$109.00) as per your statement. Am sorry this account has been allowed to drag along as long as it has but I assure you that it is beyond me why it has not been settled before. Do not understand it at present time, but take it to be an oversight of Mr. J. A. Fagerberg in settling up acct. before his leaving for the states. Might also state that has been on the road since his arrival in Seattle. Thanks for your patience in the matter.

Respectfully,

(Signed) FAGERBERG BROS.

Pr. H. M. FAGERBERG.

Mr. DONOHOE.—He is entitled to explain that.

The WITNESS.—When Al went out in the fall of 1912, he left me in charge of the business, you might say; he didn't tell me the state of affairs or anything—he went off with the understanding that he was to settle up with me on the first of the year. During this time Schwabacher wrote me several letters in regard to this bill, they were getting rather mad about it and demanded a settlement of this bill. I took the matter up with them, as the thing explains itself—wanted an explanation of it and they wrote back several letters and we had quite a correspondence over the thing and I finally paid it myself to protect the business and if I signed it as Fagerberg Bros. per H. M. Fagerberg, it is immaterial—I

(Testimony of H. M. Fagerberg.)

didn't think of the legal point as having any bearing on it in any way—I didn't think of it at the time and it wasn't with any idea of partnership or anything else. I sent it that way as [82—65] I explained before, the business has been conducted as Fagerberg Brothers to protect the Carstens Packing Co. and used as a firm name in that respect only, and that is as far as I am responsible for that.

Q. Did you ever see that check before? (Handing witness check.) A. Yes, sir.

Q. Will you look at the signature on the back and see who made it, the endorsement? A. Yes, sir.

Q. Whose is that? A. It is my own.

Mr. RITCHIE.—We offer this in evidence for the same purpose, as an item of evidence, tending to show the existence of a partnership.

Mr. DONOHUE.—We object to the introduction of this in evidence because the check is made payable to Fagerberg Brothers and could not be cashed at the bank until endorsed Fagerberg Brothers.

Objection overruled and check admitted in evidence as Defendants' Exhibit #3. Plaintiff allowed an exception to the ruling.

Q. This check was given to you by me, was it not?

A. Yes, sir.

Q. You didn't ask me to change it and make it payable to H. M. Fagerberg or J. A. Fagerberg?

A. No, sir.

Q. This was given to you on account of the Victor Olsen account? A. Yes, sir.

Q. For goods which you sold to Victor Olsen on

(Testimony of H. M. Fagerberg.)

his wood contract? A. Yes, it was sold up there.

Q. And the billheads on which the statements of account against [83—66] Victor Olsen were made were the billheads of Fagerberg Bros.?

A. I couldn't say as to that, I don't know.

Q. You don't remember?

A. I don't know—I didn't make them out.

Mr. RITCHIE.—I will read the check to the Jury:
(Reading.)

Defendants' Exhibit No. 3 [Check].

Valdez, Alaska, July 25, 1912. No. 667.

S. Blum & Co., Bankers.

Pay to Fagerberg Bros. or order \$76.00,
seventy-six and No/100Dollars

E. E. RITCHIE.

Acct. V. Olson.

[Endorsed]: Fagerberg Bros. Per H. M. Fagerberg, member of firm.

Q. Did you have a book account in the name of Fagerberg Bros. in Valdez? A. No, sir.

Q. Did you have a bank account in the name of J. A. Fagerberg and H. M. Fagerberg?

A. Yes, I believe there was an account—I sent money to both accounts.

Q. Where was that account kept?

A. In the Valdez Bank & Mercantile Co.

Q. In what years?

A. Why, I think in the years 1908, 9 and 10—I am not positive as to that.

Q. What deposits did you make in that, what moneys? The moneys of the Chititu store?

(Testimony of H. M. Fagerberg.)

A. Yes, sir, the Chititu store.

Q. Was that a joint account of J. A. Fagerberg and H. M. Fagerberg or two separate accounts?

A. It was two separate accounts.

Q. You didn't keep a joint account of J. A. Fagerberg and H. M. Fagerberg? A. No, sir. [84—67]

Q. You are sure of that? A. I am sure of that.

Q. What moneys were deposited in these accounts? A. Moneys from the Chititu store.

Q. And did you deposit them all in one name or some in one and some in the other?

A. Some in one and some in another.

Q. And the moneys belonging to the Chititu store business were deposited in them? A. Yes, sir.

Q. And you are sure there never was a joint account?

A. Yes, sir, I am sure there never was a joint account.

Q. And you deposited sometimes in one account and sometimes in another and if in your name you would check it and if in his name, he would check it?

A. Yes; the reason I did that, I was short of change in there and I would check on that account to make the change.

Q. The use of the name of Fagerberg Brothers was solely a sort of arrangement of convenience?

A. As an arrangement of convenience, and it just naturally drifted into Fagerberg Brothers after I went in there and took charge of it; we didn't advertise it, as I say, at all; the first I knew about these billheads was when they came into Chititu.

(Testimony of H. M. Fagerberg.)

Q. You didn't order them yourself? A. No, sir.

Q. Do you know where they were printed?

A. No, sir.

Q. Did you have any letterheads printed Fagerberg Brothers?

A. Not any letterheads, no, sir.

Q. How did Blum & Co. make shipments to you to the Chititu store—you say you bought from them from time to time—did the shipments [85—68] come Fagerberg Brothers?

A. At the Chititu store, I couldn't say—the shipments from Blum there were not very extensive; I don't remember how they were shipped.

Q. In keeping up the business there, during the previous years, it was necessary to renew the stock with some kind of live stuff? A. Yes, sir.

Q. And there was considerable buying, from not only Blum, but outside houses? A. Yes, sir.

Q. And in the spring of 1914 there was a lot of shipments came in, were there not, to Blackburn and McCarthy, addressed to Fagerberg Brothers?

A. Not that I know of, no, sir.

Q. You never saw any? A. No, sir.

Q. How did the oats come in? There was a big shipment of oats from LaConnor shipped in there—how were they shipped?

A. J. A. Fagerberg & Company.

Q. Did you ever see any oats up at the roadhouse, on the Shushana trail, where there was some oats attached by the marshal—David's roadhouse?

A. I seen some oats there, yes.

(Testimony of H. M. Fagerberg.)

Q. How were they stamped?

A. I think J. A. Fagerberg & Company.

Q. You are sure they were not stamped Fagerberg Brothers?

A. I think not; I hauled them there and I don't know of it.

Q. In the spring of 1914 Al got back—about what time was it? A. In February.

Q. And then you took the roadhouse back from Breedman & Church [86—69] about the first of March?

A. Yes, sir, that was the time of taking it over.

Q. They had a stock of goods in there, mercantile goods? A. Yes, sir.

Q. And you bought them from Breedman & Church?

A. I don't know what arrangements they made at all—I was not there when he made the arrangements with them.

Q. You had nothing to do with that?

A. I had nothing to do with that.

Q. Did you or did you not give a promissory note signed Fagerberg Brothers, by H. M. Fagerberg, for those goods? A. Yes, I signed the note.

Q. The note was signed Fagerberg Brothers?

A. No, it was not, it was J. A. Fagerberg and I went good for it—Church asked me to.

Q. You didn't sign it Fagerberg Brothers?

A. No, sir—not that I wrote; I signed my own name.

Q. Has that note been paid? A. Yes, sir.

(Testimony of H. M. Fagerberg.)

Q. Have you the note in your possession?

A. No, I have not.

Q. Do you know where it can be obtained?

A. Yes, I think I can get it—I think it is at Blackburn.

Q. And the note is signed by J. A. Fagerberg and also by H. M. Fagerberg—each signed by himself?

A. Yes, sir, each signed by himself; that is the only way he would turn the goods over and I went and signed it, too; that is the way that was done.

Q. You made a deal then and at that time, according to this written contract, March, 1914, you owned everything that Al Fagerberg had owned up there—by that bill of sale—you owned the [87—70] Chititu store and the stock of goods there and the Blackburn roadhouse and the blacksmith-shop and the furniture and the stock of goods—or didn't you own the stock of goods?

A. No, I did not; I had nothing to do with them.

Q. Al took that over himself?

A. Al took that over himself.

Q. You owned the roadhouse and furniture?

A. I owned the roadhouse and furniture.

Q. Why did you make this lease to Al? (Referring to paper.) A. To protect myself.

Q. To protect yourself in what way—why didn't you run the road-house if it was so profitable?

A. If any man comes along and makes me a proposition of \$7,000, and I was to get it, I was willing to quit the country.

Q. What I am getting at is—you owned this road-

(Testimony of H. M. Fagerberg.)

house and everything in it and it was a very profitable business, and you owned the horses, and you figured out you could make good money—a good many hundred dollars per month from them—and yet you leased everything to Al Fagerberg and turned in and worked for him for \$100 per month according to this agreement? A. Yes, sir.

Q. Was that getting out of the country?

A. No, sir.

Q. Why did you do that?

A. In the first place what was only supposed to run for about a month before the incorporation was to be perfected and that was to be turned over to them; that was not to be run for any length of time; that was the understanding when I turned that over to him and they were to go ahead and carry this thing, in fact, my brother telegraphed for a man to Carstens and they [88—71] sent him up, but they didn't send the man he wanted; he was to get out and perfect the organization before I turned it over to him; I was to turn it over to him after the incorporation.

Q. Do you wish to be understood as testifying under oath, as you know you are, that this transfer of everything that Al Fagerberg owned in the District of Alaska in the summer of 1913, was not made to cover up this property and protect him against a decree for alimony in favor of his wife?

A. I don't know a thing about that; it don't concern me in the least—all I know is the agreement before he went out.

(Testimony of H. M. Fagerberg.)

Q. It wasn't the purpose to protect Al?

A. No, sir, not to my knowledge.

Q. You know at that time he was having trouble with his wife?

A. I certainly knew of it and that is the reason I was after him.

Q. And she had a decree of the Court against him for alimony?

A. I don't know anything about that; I don't recollect it.

Q. This transfer then was made at that particular time solely for the purpose of protecting you and liquidating the indebtedness due you from J. A. Fagerberg and Thomas Carstens?

A. That was the sole idea with me and if they came through with the money to me I had nothing to say, I was satisfied.

Q. You never had any information from Mr. Carstens about this proposed incorporation, did you?

A. No, sir; never did.

Q. Is George A. Custer any relation to you?

A. Yes, he is my brother-in-law.

Q. He is married to a sister to you and Al?

A. Yes, sir.

Q. Have you ever written anything to George Custer about your affairs and the large amount of money due you from Al and the Carstens Packing Company? [89—72]

A. No, sir, I never have, not to my knowledge---don't recollect of ever writing to him in regard to the business at all.

(Testimony of H. M. Fagerberg.)

Q. You worked for Al Fagerberg and the Carstens Packing Co., Thomas Carstens, for nearly six years, until they owed you a balance of nearly five thousand dollars, and you never wrote to Thomas Carstens and asked him for the money? A. No, sir, I never did.

Q. Mr. Custer is a lawyer, is he not?

A. Yes, sir, he is.

Q. And in active practice in Seattle?

A. Yes, sir.

Q. Al Fagerberg and Thomas Carstens—Al Fagerberg and Mrs. Damon ran the roadhouse from March until the attachment in August under that lease from you, did they not?

Mr. DONOHUE.—We object to that as not proper cross-examination and not based on any testimony and we object to the idea of bringing Mrs. Damon into this case as unfair and unprofessional.

By the COURT.—You may ask who ran the roadhouse under this agreement.

Q. Who ran the roadhouse from the first of March until the attachment about the first of August?

A. Al ran the roadhouse; that is, it was under his supervision.

Q. He had charge of it? A. He had charge of it.

Q. Now, you say that Rudolph Henderson assisted you in the packing? A. Yes, sir.

Q. Anyone else at any time?

A. No, sir; during freighting there was some other drivers.

Q. For whom was Rudolph Henderson working?

[90—73] A. Al Fagerberg and Carstens.

(Testimony of H. M. Fagerberg.)

Q. The same as yourself?

A. The same as myself.:

Q. You were both working as packers?

A. Yes, sir.

Q. Had no interest in the business and no authority except that you were in charge when you were away from him? A. Yes, sir.

Q. And had no interest in the contracts?

A. No, sir.

Q. You were using how many horses?

A. Ten on the start.

Q. How many of them belonged to you?

A. The bunch of them belonged to me,

Q. All of them belonged to you? A. Yes, sir.

Q. Two of those horses you had gotten from Al?

A. Yes, sir.

Q. He bought them two or three years before?

A. Yes, sir.

Q. And the other three you bought yourself?

A. Yes, sir.

Q. In what year? A. 1913.

Q. From whom?

A. From the Kennecott Mines Company and Brooks.

Q. How much did you pay for each one of them?

A. I paid to the Kennecott Mines Company \$285 for a team.

Q. You bought a team from the Kennecott Mines Company? A. Yes, sir. [91—74]

Q. And how much did you pay Brooks for the other horse?

(Testimony of H. M. Fagerberg.)

A. \$75. This was in the fall of the year, the fall of 1913.

Q. Do you know what Al paid for the two horses you had?

A. No, not for a positive fact, only what he told me.

Q. When did he buy them, if you know?

A. I think it was in the fall of 1910, I am not positive.

Q. He had had them for several years?

A. Yes, sir.

Q. Now, when did you first hear of this attachment—where were you when you first heard that Millsap had a writ of attachment?

A. When I got to McCarthy; I had been over at Chititu with pack horses.

Q. You went right back to Chititu immediately, did you not? A. Yes, sir.

Q. And demanded possession of the Chititu store, did you not?

A. I didn't demand it, no sir. I told Mrs. Cole that I was in possession of the store and it was mine; that Al had quit and I was in possession again.

Q. You didn't ask for possession?

A. I didn't ask for possession, no.

Q. And at that time the Blackburn roadhouse had not been attached? A. No, sir.

Q. That was attached several days later?

A. Yes, sir.

Q. What was attached when you got to Blackburn?

(Testimony of H. M. Fagerberg.)

A. The merchandise in the store, that is the first time; the second time, when I came back, it was the merchandise in the warehouse and several days later they came back and attached the whole thing.

Q. Where did the furniture come from that went into the Blackburn [92—75] roadhouse? Where was it bought?

A. Some of it was bought from the Compact Furniture Company, some Michigan outfit. It was knocked-down furniture when it came there, part of it, and part of it was gotten from the railroad company.

Q. From their camps?

A. From the commissary, yes; I don't know where they got it from.

Q. You didn't have anything to do with the buying?

A. No—well, I did buy some of it; I bought some from the railroad company, the time my brother wasn't there; he told me to watch out for any snaps and if I could pick up any snaps, to take it.

Q. And you bought some from time to time?

A. I bought some from time to time.

Q. You don't remember what you bought or what you paid for it?

A. No, it was in the nature of bedsteads and things like that, and chairs.

Q. And camp utensils and cooking utensils, perhaps? A. Yes.

Q. Any stoves? A. One stove, yes.

Q. You have no idea how much you paid for it?

(Testimony of H. M. Fagerberg.)

A. No, I don't recollect the circumstances.

Q. You bought it at low prices, the railroad going out of the business? A. Yes, sir.

Q. What was bought from the Michigan Furniture Co. if you remember? A. Just chairs.

Q. Beds? A. No, not that I know of. [93—76]

Q. Chairs and possibly desks?

A. Chairs and desks and tables.

Q. Any carpets?

A. No, there is no carpets from them.

Q. Any kitchen utensils? A. No.

Q. No bedding or bedsteads, you remember?

A. No, the bedding was bought from Blum, I think.

Q. Who ordered the stuff from Michigan?

A. Al did.

Q. Do you remember how it was shipped?

A. No, I don't remember the circumstances at all.

Q. Wasn't there quite a lot of shipments made to Fagerberg Bros. last year from outside houses?

A. Last year?

Q. A year ago—1914?

A. Not to my knowledge—I don't know.

Q. You had nothing to do with that?

A. I had nothing to do with that; I wasn't there when the shipments were made—I couldn't say; I was on the trail.

Q. You never ordered any yourself?

A. I never ordered any myself; if any shipments

(Testimony of H. M. Fagerberg.)

came, I knew nothing about it and had nothing to do with it.

Q. Do you know anything about any purchases from Schwabacher Brothers or Frye-Bruhn or the Richmond Paper Co.? A. No, sir, I do not.

Q. Do you know whether or not those shipments or any of them came to Blackburn stamped Fagerberg Brothers?

A. I couldn't say—I never paid any attention and never saw them.

Q. You filed a petition in bankruptcy against J. A. Fagerberg last [94—77] September in this court, I believe? A. Yes, sir.

Q. Among the allegations here (consulting paper), following the necessary allegations as to indebtedness and as to his occupation so as to qualify him for bankruptcy under the federal act is this statement, it is found near the bottom of the first page: That your petitioner is a creditor of said J. A. Fagerberg having provable claims against him which amount in the aggregate, in excess of security held by him, to five thousand one hundred eleven dollars and fifty cents; and that your petitioner is entitled to priority of payment of only a small part of his said claim, to wit, less than three hundred dollars within the meaning of section 64-b of the bankruptcy law of 1898, and that your petitioner has not received a preference within the meaning of sec. 60-a-b of such law as amended. Now, the \$300 of which you claim priority of payment and would be entitled to if you were a wage-earner, was the three months wages to which

(Testimony of H. M. Fagerberg.)

a wage-earner is entitled for the three months next preceding the petition of bankruptcy at \$100 per month? A. Yes, sir.

Q. If you were working for J. A. Fagerberg as you state you were entitled to \$300 priority?

A. Yes, sir.

Q. And that is the \$300 priority you speak of?

A. Yes, sir, that is the way I understand it.

Q. Now, what is the basis of the other \$4,800 of indebtedness—you say he owed you \$5,100?

A. From the rent of the roadhouse and the use of the horses.

Q. Since which time?

A. Since the fourth of March when he took possession. [95—78]

Q. There was no other basis for the claim? There wasn't any old indebtedness? A. No, sir.

Q. You leased the ten horses for \$2.00 a day apiece? A. \$2.50 if I recollect right.

Q. I think the contract says \$2.00. Yes, ten head of horses at \$2.00 per day; that would be \$20 per day for the ten horses or \$600 per month for the use of the horses.

By the COURT.—How many months were they charged?

Mr. DONOHOE.—Five months.

Q. I will read you your own statement and see whether it is correct: “Money due and owing deponent by bankrupt under an express contract of lease of Blackburn roadhouse, between March 1st and August 2d, 1914, at the agreed rental of \$200.00

(Testimony of H. M. Fagerberg.)

per month, and amounting to \$1,000.00; rental for Chititu store for same period at \$25.00 per month, \$125.00; hire for ten horses for same period at two dollars per day per horse, \$3,120.00; merchandise sold and delivered to bankrupt on March 1st, 1914, at his special instance and request, \$366.50." What was that merchandise that you sold to J. A. Fagerberg about the first of March?

A. It was hay and grain.

Q. And from the \$500 due for wages for five months, \$300 would be the amount of your priority? You didn't draw any money at all from the first of March to the first of August?

A. No, I didn't get a cent.

Q. There was no money drawn on the contracts?

A. No, sir.

Q. Were you engaged constantly in freighting from about March first to August 2d?

A. Freighting and packing, yes, sir. [96—79]

Q. Did you freight in to Chititu for Esterly?

A. No, sir.

Q. Did you freight in for Kernan? A. No, sir.

Q. For whom were you working?

A. To Chititu is the Nizina stock that went in there.

Q. You freighted in the Nizina stock?

A. Yes, sir.

Q. What stock is that?

A. That is the stock that went into the Nizina store.

Q. Where was that?

(Testimony of H. M. Fagerberg.)

A. That was from Carstens—Al was putting that in; I don't know anything about it; and then hauling oats along the trail, preparatory work for the summer's packing.

Q. There was a large shipment of oats came to J. A. Fagerberg? A. Yes, sir.

Q. What became of those oats? Where were they distributed?

A. Charley Davids at Shushana—various places along the trail.

Q. Were any of them sold? A. Yes, sir.

Q. To whom were some of them sold?

A. Some were sold to Mr. Hamshaw.

Q. What was your understanding as to the ownership of those oats? A. They belonged to Al.

Q. Not to Carstens and Fagerberg?

A. Well, I say Al—when I say that—

Q. You mean Al and Carstens, perhaps?

A. That is my understanding of it.

Q. Your understanding of it was that the Carstens had an interest in them?

A. I supposed they had. [97—80]

Q. You supposed they had?

A. They seemed to put up money for it.

Q. Where did you get the feed for the horses between March and August?

A. I don't know, what we started out on was feed I turned over to him myself

Q. Were they fed out of these oats brought up from LaConnor in the spring? A. Yes, sir.

Q. You fed the ten horses very largely out of

(Testimony of H. M. Fagerberg.)

them? A. Yes, I guess they were.

Q. Who else did you freight for that spring?

A. Why, just practically hauling in stuff for them in the Shushana, so far as the freighting went.

Q. Were you constantly employed?

A. Pretty much all the time, yes; you see after the freighting stopped, that is, the use of the horses, I went on the mail run to the Shushana; we started along in May.

Q. Carrying mail from McCarthy to Shushana?

A. From Charley Davids; my run was from Davids to Shushana; I was met there, Henderson carrying it to Dan Creek and Chititu and he met me at Davids and I carried it from there on into the Shushana.

Q. And when did that mail contract start?

A. The first of May as near as I can remember.

Q. How often did you carry the mail?

A. Twice a month.

Q. How long did it take you to make the round trip? A. About six days.

Q. And how many horses did you use?

A. First, I didn't use any horses at all, that is, only up to the [98—81] glacier; I used dogs—packed it on my back part of the ways and used dogs and horses, any way to get it there.

Q. How much freight do you think you carried altogether between the first of March and the first of August with those ten horses?

A. As to that time I couldn't say—the horses were

(Testimony of H. M. Fagerberg.)

busy all the time.

Q. Do you know how much Al Fagerberg was to receive on those contracts for the freighting you did?

A. No.

Q. You have no idea?

A. No—you see this is the way the proposition laid—Al was packing any time they had spare time; he would pack out oats or anything else along the trail in view of the idea of carrying the mail during the summer, to supply the horses during the summer and any time they were not working, he would start them in there.

Q. Do you think that you and Henderson and the horses brought in \$5,000 in freight between the first of March and the first of August?

A. Perhaps we didn't get it in cash—indirectly, if they went together, they would have made it and earned it.

Q. Do you think between the first of March and the first of August there was \$5,000 freighting done? That it would amount to that?

A. No, I don't think so, because it was preparatory work that had an influence on the future.

Q. You think the business was such that you could have gotten that \$5,100 that was due from Al from the first of March to the first of August?

A. If the business had been carried on. [99—82]

Q. If it had not been for this attachment, you would have gotten this \$5,100 in time?

A. I think perhaps I would, in time.

Q. There was no side agreement between you and

(Testimony of H. M. Fagerberg.)

A. That if you didn't earn it, you wouldn't get \$20 a day for the horses?

A. No, sir; in fact this contract is not supposed to run as long as it did at all; at one time I had an attachment made out, intended to attach the stock of goods myself, but I was talked out of it by my brother; the attachment was sworn to and everything by the commissioner up there.

Q. That was early in the summer?

A. That was early in the summer, yes, sir; I was out to do no one—I was out to do a square deal.

Whereupon Court adjourned until to-morrow (Tuesday) at 10 A. M.

Tuesday, May 11, 1915—Morning Session.

Continuation of the cross-examination of H. M. Fagerberg, by Mr. Ritchie.

Q. You stated yesterday, as is shown by the record here in the bankruptcy proceedings against J. A. Fagerberg, that you filed the petition in bankruptcy?

A. Yes, sir.

Q. Were you familiar at that time with the general indebtedness of J. A. Fagerberg?

A. Not to any great extent, no, sir.

Q. You didn't know just what creditors he owed?

A. No, I did not.

Q. Nor what amount? A. No.

Q. But you knew enough about it to know he was insolvent? A. Yes, sir. [100—83]

Q. You knew that from your relations with him and your inability to enforce your own claims against him? A. Yes, sir.

(Testimony of H. M. Fagerberg.)

Q. Have you ever seen the schedules in bankruptcy? A. Yes, sir.

Q. Do you know anything about the claim of the Carstens Packing Co. which is set up here as \$5,918.-32, merchandise and loan?

A. Only in a general way and what I have heard since.

Q. Did you receive at any time any of the goods involved in that \$5,900 claim?

A. Personally, you mean myself?

Q. Yes. A. No, sir, I did not.

Q. You and your brother together?

A. No, sir, I didn't have anything to do with that.

Q. Do you know when these goods were delivered and what was done with them?

A. Yes, I know when they were delivered—I helped haul them to Chititu.

Q. Were any of them used at Blackburn?

A. Not that I know of—I really don't know how the goods were distributed or where they came from; I didn't pay much attention to that; there were goods delivered there and some went to Chititu and some to Blackburn—I don't know, I didn't pay any attention to it.

Q. This indebtedness to Jennings Brothers, Mt. Vernon, Washington, \$1,014.50—that was for the oats, was it not? A. I imagine it was.

Q. You don't personally know?

A. No, sir, I don't personally know.

Q. Do you know anything of the claim of Schilling & Co. San [101—84] Francisco?

A. Just in a general way.

(Testimony of H. M. Fagerberg.)

Q. Or the Richmond Paper Company?

A. No, sir—I don't know anything about that.

Q. Or the Klock Produce Company?

A. No, sir, I don't know anything about that.

Q. You had nothing to do with the incurring of that indebtedness? A. No, sir.

Q. And you received none of the goods?

A. I received none of the goods, no.

Q. You stated yesterday that Rudolph Henderson was working for your brother, J. A. Fagerberg and not for you? A. Yes, sir.

Q. What information did you have about this proposed incorporation in the spring of 1914? Did you have any except what you received from Al?

A. That is all I had.

Q. You had no correspondence from anybody outside? A. No, sir.

Q. No information from George Custer?

A. No, sir.

Q. He wasn't involved in it in any way to your knowledge?

A. Not to my knowledge—not at that time anyway.

Q. At that time, when Al Fagerberg came up, about the first of March, or a little before perhaps, 1914, you were still working as you understood it under the old arrangement?

A. No, sir—before that I was working strictly for myself, before he came up—he didn't have nothing to do with the business at that time.

Q. You ceased to work under the old arrangement

(Testimony of H. M. Fagerberg.)

in the summer of 1913? [102—85]

A. When the deed was delivered to me I ceased to work under it—it was null and void, according to my understanding of it.

Q. That was in July or August, 1913?

A. That was July, 1913.

Q. From that time on you worked wholly for yourself?

A. From that time on I worked for myself.

Q. And your business was independent?

A. My business was independent and I considered it my own.

Q. You may state again what you were doing in the fall of 1913—in the winter of 1913 and 14?

A. I was getting out logs and done some freighting.

Q. On your own account?

A. On my own account.

Q. There was a sign on the station at Blackburn until recently, a large sign, Fagerberg Brothers, freighters?

A. No, there was no sign there—it just said See Fagerberg, Blackburn.

Q. It never said Fagerberg Brothers?

A. No, sir, it never said Fagerberg Brothers, never did at no time.

Q. What Fagerberg did that refer to?

A. Myself—I had that put up.

Q. At what time?

A. That was along in the fall of the year—if I recollect right it was along in December when I put that sign up.

(Testimony of H. M. Fagerberg.)

Q. What personal property, what property of all kinds did you own, about March, 1914, when this contract was drawn up by Frank Foster between your brother and yourself by which it was agreed that you were to get into this incorporation with the Carstens? You owned the Chititu store at that time? A. Yes, sir.

Q. Did you own any stock of goods in it? [103—86]

A. Just what old stock there was there.

Q. Just what they left there?

A. Just remnants of the old stock.

Q. That was some remnants of the old stock you took over in 1907? A. Yes, sir.

Q. Do you remember what the inventory of that stock was in 1907?

A. I do not know the exact, amount—I couldn't give you that off hand.

Q. There was an inventory made?

A. There was an inventory made.

Q. Do you remember the amount of that?

A. No, sir, I do not.

Q. Wasn't it about \$30,000?

A. I couldn't say, it might have been.

Q. It was approximately that?

A. Perhaps it was, I don't know—that is on the prices they were selling at at that time.

Q. That was Nizina prices?

A. That was Nizina prices.

Q. That is Nizina wholesale prices, cost and carriage of the goods, landed there? A. Yes, sir.

(Testimony of H. M. Fagerberg.)

Q. That is the way inventories are usually taken of store stocks? A. Yes, sir.

Q. About how much of that stock was remaining in 1913, when you took it over?

A. Why, there was practically hardware, some liquors and a little of everything, that was all of value—the hardware was about all of any value.
[104—87]

Q. Practically everything of value had been sold?

A. Yes, you might put it that way—sold or destroyed; it was worthless.

Q. It had been gutted so it was mostly remnants?

A. Yes, sir, it was mostly remnants.

Q. (By the Court.) How much liquor was there?

A. I couldn't say the exact value of the liquors—there was beer and whiskey and gin, a little variety of everything.

Q. Was there a license at one time granted?

A. There was a license—Wilson had a license, the Nizina Trading Company.

Q. What was the last year they had a license?

A. If I remember right it was 1904 or 5, I am not positive on that point, I wouldn't say about that.

Mr. DIMOND.—It was 1905.

By the COURT.—That was the last year of the license?

Mr. DIMOND.—Yes, sir.

Q. When you took over the stock in 1907, there were some liquors remaining?

A. Yes, sir, when I took over the stock in 1907 there were some liquors remaining.

(Testimony of H. M. Fagerberg.)

Q. Some unbroken cases perhaps or bottles?

A. Yes, sir.

Q. You owned the Chititu store and what goods were in it? A. Yes, sir.

Q. Was there anything else of value at Chititu?

A. There was the fixtures in the store, that was practically all.

Q. What was the store building and fixtures worth?

A. The building wasn't worth nothing.

Q. The fixtures had some value? [105—88]

A. The fixtures had some value.

Q. What was the stock and fixtures worth, \$2,000?

A. Well, it all depended upon conditions—sometimes an article is worth more than it is other times; take it at the time of the Shushana stampede, an article was worth money; it all depends on conditions, you know how it is in a mining camp.

Q. Under ordinary and normal conditions, as they have been the last few years, barring the Shushana strike, was there two or three thousand dollars worth of fixtures and goods there?

A. I should say there would be between two and three thousand—that is, according to the prices prevailing there.

Q. The property, the building, at Blackburn, you fix the value of that at \$3,000? A. Yes, sir.

Q. And the furniture \$2,000? A. Yes, sir.

Q. And the blacksmith-shop and outbuilding about \$200 or \$250, and the barn \$500 that makes \$5,000 or a little over for the buildings and equipment?

(Testimony of H. M. Fagerberg.)

A. Yes, sir.

Q. And you had horses of what value?

A. Myself?

Q. Yes.

A. I had ten head of horses at the time I turned it over to him, to my brother.

Q. And you had sleds and harness and wagons?

A. Yes, sir.

Q. What was the horses and general teaming equipment worth?

A. I figured the horses were worth \$200 at the time they were attached.

Q. That would be \$2,000? [106—89] A. Yes.

Q. And what was the other equipment worth that you used in freighting and teaming, sleds, harness and wagons?

A. Well, it would be worth about \$800, somewhere near \$800.

Q. That would be then approximately \$9,000 worth of property you had there in the spring of 1914? A. Close to it.

Q. A little over \$6,000 for the buildings and a little over \$3,000 for the horses and freighting outfit?

A. Yes, sir.

Q. You were going to put that into the incorporation if that deal had gone through? A. Yes, sir.

Q. And what was the arrangements as to the division of stock in that corporation?

A. I was to get 7000 shares, my brother ten thousand, as I understood it and Carstens was to have 20,000, 10,000 in consideration of their old stock,

(Testimony of H. M. Fagerberg.)

the way I understood it and 10,000 for merchandise and wares and one thing and another they were to put up, practically cash—you might call it cash.

Q. He was to be allowed ten thousand for the old Nizina stock?

A. He was to be allowed ten thousand for the old Nizina stock.

Q. And ten thousand more for new money and goods he was to put in?

A. Yes, that is my understanding of it.

Q. And Al was to get ten thousand?

A. Yes, sir.

Q. What property was to go into this incorporation besides the \$9,000 worth of personal property you put in and the few thousand dollars Carstens was to put in?

A. There was the Nizina roadhouse and store and practically everything I had in the country—that is practically what it amounted [107—90] to when it came to a showdown. I intended to clean up with this agreement in the fall—I was to get my \$7,000 out of the business and I was to have nothing left in the country; that included some claims I had in the Shushana, my interest in the mill, the Borger-Struck Mill Company, etc.

Q. What was that worth?

A. That was practically borrowed money I had and that was to be cleared up.

Q. What was the value of your mining property and the mill property, approximately?

A. The mill had about 150,000 feet of logs on hand.

(Testimony of H. M. Fagerberg.)

They cost about, in the water, \$11 per, thousand landed in the water.

Q. That would be then something over sixteen or seventeen hundred dollars?

A. Yes, and the value of the mill at that time, over \$2,000.

Q. Somewhere from 3,500 to \$4,000 in the mill and logs and lumber in the mill? A. Yes, sir.

Q. And your Shushana claims were wholly of speculative value?

A. Yes, my Shushana claims were of speculative value.

Q. You considered they had some value—they were fair prospects? A. Yes, sir.

Q. Then you had something like \$13,000. worth of property?

A. Practically—you might put it that way yes.

Q. And Carstens was to be allowed ten thousand for his old loan in the Nizina store? A. Yes, sir.

Q. And ten thousand for new property he was to put in—was he to put in the full ten thousand?

A. That was my understanding of it—that he was to put up \$10,000 cash. [108—91]

Q. What was Al to put in for his ten thousand?

A. I don't know—I left that to him, that was his own business and I didn't consider it, as long as the prospect suited me.

Q. The company was to be organized for \$37,000, and you were to put in \$13,000 of property and get \$7,000 out of it? A. Yes, sir.

Q. Mr. Carstens was to put in ten and get

(Testimony of H. M. Fagerberg.)

twenty? A. Yes.

Q. And Al was to put in his talent and get ten?

A. Yes, sir. When I put in this thirteen thousand, you want to know that there was some liabilities against this thing.

Q. How much were they?

A. Close on to \$3,000.

Q. Then the equity wasn't over \$10,000?

A. No, sir.

Q. And you were anxious to get out of the country and were willing to take \$7,000? A. Yes, sir.

Q. You had property then, personally, there worth \$13,000 with mortgages or other liabilities against it aggregating \$3,000. It was worth about ten?

A. Yes, sir.

Q. And you at that time made a lease to your brother which aggregated a return to you of \$925 per month? A. Yes, sir.

Q. Which would be \$11,100 per year?

A. Yes, sir.

Q. And you insist that no one but yourself had any interest in that? A. I certainly do. [109—92]

Q. And you leased that to your brother, property worth \$13,000, at a rate that was to bring you \$11,000 a year? A. Yes, you can put it that way.

Q. But you were willing to take \$7,000 for it and get out of the country? A. Yes, sir.

Q. There was no understanding at all, no secret agreement, between your brother and yourself that he really had an interest in that property but that it had to be carried in your name on account of his diffi-

(Testimony of H. M. Fagerberg.)

culties with his wife?

A. There certainly was not.

Q. There never was at any time? A. No, sir.

Q. Now, about that time, about March, 1914, when you were making these other arrangements, which I believe you testified were temporary, pending the final consummation of the incorporation deal, you made out a bill of sale to Thomas Carstens for the Chititu store, did you not?

A. Yes, there was one drawn up, but it was never consummated.

Q. You signed that and placed it in escrow?

A. Yes, sir.

Q. It was drawn up by Mr. Lattin, the agent?

A. It was drawn up by Mr. Wilt.

Q. And in whose hand was it placed in escrow?

A. Mr. Foster.

Q. Mr. Foster was to hold it? A. Yes, sir.

Q. And what was the object of that bill of sale?

A. They were trying to adjust their difficulties between Al and Carstens and Al had made me a proposition if I would turn that over to him, he would pay me \$500 cash for the layout and [110—93] the money was put up in the hands of Mrs. Damon and I knew it was good, for the Nizina store.

Q. That is the layout at Nizina?

A. The layout at Nizina—that was put up in cash—if we went through I would get the \$500 and they would get the store.

Q. And that fell through because Al and Wilt were unable— A. To arrive at an agreement.

(Testimony of H. M. Fagerberg.)

Q. So that was dropped? A. Yes, sir.

Q. And the sole consideration for that was, if the deal went through, you were to get \$500?

A. Yes, sir.

Q. Wasn't there the further consideration that Al Fagerberg was to be released of all liabilities he owed the Carstens?

A. I don't know anything about that.

Q. You were not interested in that at all?

A. I was not interested in that at all.

Q. You were only interested in getting your \$500?

A. I was only interested in getting my \$500.

Q. You used to keep the Blackburn roadhouse and run the store in connection with it and it was insured? A. I believe it was.

Q. Who took out the insurance?

A. If I am informed right, I think Blum took out the insurance.

Q. In order to cover their indebtedness?

A. Yes, sir.

Q. You were mortgaged to Blum most of the time?

A. Yes, sir.

Q. Did you ever have any correspondence with the insurance agent about it?

A. No, sir, not myself. [111—94]

Q. Who issued that insurance, what local agent—do you know who wrote it?

A. No, I am not familiar with the conditions of it at all.

Q. Did you ever see the insurance policies?

A. I never did.

(Testimony of H. M. Fagerberg.)

Q. Did you ever see any of the correspondence about it? A. I never did.

Q. Do you remember what years they were insured?

A. No, I do not, I am not acquainted with the facts of it at all.

Q. You never saw the policies?

A. No, sir, I never saw the policies.

Q. Do you remember that they were insured, the buildings were insured, in 1912?

A. I couldn't say as to that, I don't know.

Q. You don't know who is the custodian of the policy? A. No, sir.

Q. You never received any letter from A. J. Adams at Cordova about this?

A. No, sir, not to my recollection—I don't remember seeing anything about it.

Q. Did you ever see a letter reading like this—“Cordova, Alaska, June 12, 1914. Fagerberg Brothers, McCarthy, Gentlemen: On May 29th we sent you two policies covering your building at Blackburn in the sum of one thousand dollars each”—and then goes on to state that the San Francisco office had canceled one of the policies, the Westchester Company policy—you never got that letter from Mr. Adams?

A. No, sir, I never saw that letter.

Q. Did you mail the policy to Mr. Adams?

A. I don't know anything about it—I never had anything to do with it. [112—95]

Q. You know nothing whatever about the insur-

(Testimony of H. M. Fagerberg.)

ance? A. No, sir.

Q. You never had enough to do with the running of the Blackburn roadhouse to take any interest in that? A. No, sir.

Q. There seems to be some accounts kept in the front of this book and some at the back? (Mr. Ritchie refers to book later marked Defendant's Exhibit #4.) A. Yes, sir.

Q. What account did you keep in the front of the book?

A. This was a cash account, cash taken in and paid out; my brother started this in a bookkeeping form, but I never kept it up. I turned to the back here and just kept track of the actual cash taken in and sent to the different banks here.

Q. This is simply the remittances?

A. This is simply the remittances and the cash turned over to the banks and to J. A. Fagerberg.

Q. These are remittances sent down there; I see here H. M. Fagerberg by A. J. Dimond—you sent \$300. down by A. J. Dimond?

A. No, the check was made out by A. J. Dimond and that is just the form of the check.

Q. These are checks? A. Those are checks.

Q. That were issued to you?

A. Yes, sir.

Q. I see a check there by J. L. Galen to Fagerberg Brothers—that is the way Mr. Galen drew up the check?

A. Yes, sir, that is the way Mr. Galen drew the check.

(Testimony of H. M. Fagerberg.)

Q. Was that at your request?

A. Not at my request—he just mailed it to me.

[113—96]

Q. Here is a draft of Range—who is he?

A. Paul Range.

Q. One of them runs to Fagerberg Brothers; here is a check to Fagerberg Brothers by Frank Kernan?

A. Yes, sir.

Q. That was a common occurrence?

A. That was a common occurrence, yes, sir.

Q. Here is a check from Esterly to Fagerberg Brothers, \$272? A. Yes, sir.

Q. It was a very common thing for men to issue checks to you as Fagerberg Brothers?

A. Yes, sir.

Q. Why did they do that?

A. Why, the business was conducted in that way to a certain extent, that is, it was general knowledge or general supposition the business would be run that way. As I stated before, the business naturally drifted into Fagerberg Brothers; we went in there without any name and I was running the store and my brother coming in there once in a while, it was the Fagerberg boys this and the Fagerberg boys that and it naturally drifted into that proposition, but I never conducted it, that is flatfooted—that is where I made my mistake.

Q. When you made this deal in the spring of 1914, by which you were to get \$600 per month for the horses and other amounts for the roadhouse and other property you had there, which aggregated \$825

(Testimony of H. M. Fagerberg.)

per month, you then went to work for \$100 per month for Al. A. Yes, sir.

Q. I asked you yesterday whether you were pretty steadily occupied between March and August?

A. I was, yes, sir.

Q. Working nearly all the time? [114—97]

A. Yes, sir, sometimes night and day.

Q. And yet you did not, as I understand it, aggregate enough earnings to earn that \$900 per month?

A. I couldn't say as to that; I don't know; I wasn't conducting the business—I didn't have the financial end of it. I was on the trail working. I imagine in time it would work itself out so I would have got my money.

Q. Is it a usual thing for horses to be worth that much in that *counright* along for five months, from March to August?

A. At that time of the year, yes.

Q. You had been freighting for a good many years there? A. Yes, sir.

Q. Had you been in the habit of making \$600 per month over and above expenses out of freighting year after year?

A. As to profits I couldn't say, but I know this, the horses have been rented out at different times and employed steadily. I can recite one instance, and perhaps this check you have in your possession will come up on that same proposition later on, that at the time I came here and you gave me this check here, I was after horses then; we were short of horses; that was in 1912; we had to have 19 horses;

(Testimony of H. M. Fagerberg.)

there were eleven horses on hand and I came to Valdez to get the balance; all those horses were hired out at \$3.00 per day and they were employed from that time until late in the fall and employed all summer, long before that, when we started in at Kenne-cott. This business was just gradually worked up and the money was reinvested in the business and went on—that is my understanding of it; it didn't jump into existence all at once.

Q. What I am getting at is this—I think all of us know there are times when horses and freighting bring big money, but I want [115—98] to know how much of the year they bring so much money—aren't there times of the year when a horse eats his head off?

A. There is, yes, I admit that—that is why I went into the milling business.

Q. Is freighting good steadily from March to August every year?

A. Practically, yes—the—the best part of it is at that time and from then on until the fall.

Q. I am trying to get at the amount of your profits; you were able to lease all of his property which is supposed to bring you \$825 per month, including these ten horses at \$600 per month and out of that your brother would expect to make some profit?

A. Naturally would, I suppose.

Q. If the freighting business is so profitable up there, how does it happen that you haven't anything more to show for all these years you have been working up there?

(Testimony of H. M. Fagerberg.)

A. As I say, this business is worked up. Put it this way, the business is getting to a point—we put in many years to work up that business to that point—it is getting to be where it is worth some money and capable of offering some money through the efforts of the past—that is sifting it down to a fine point. You can realize yourself that any business on the start has to be worked up to a certain point, before it is capable to earn that money.

Q. How is Blackburn now, isn't the town pretty near abandoned?

A. Yes, it is, through politics and one thing and another.

Q. The roadhouse has very little value now on account of the business having gone to McCarthy, two miles away?

A. To a certain extent. yes—the Carstens is the fall guy on that.

Q. When did that begin to transpire?

A. Of course, after the roadhouse was closed up there, why it naturally [116—99] drifted down, that is one reason. There are two towns there; I am going into politics now.

Q. I want you to tell just the conditions up there.

A. There is a faction at McCarthy that is doing everything in their power to kill the Blackburn place. They realize that if this deal made by my brother was consummated that it was going to be a bad thing for the McCarthy place. They done everything in their power to knock the deal with my brother and the Carstens Packing Company and the Carstens

(Testimony of H. M. Fagerberg.)

Packing Co. got scared and tried to make my brother the goat and tried to make me the goat; they wouldn't stay back of their agreement with him; that is the fine point, when you get into politics, what is back of this thing all the way through; and they sent another man up there by the name of Brown to represent them; he was mislead by the other bunch below and misinformed and hoodooed and everything else and they stirred up enmity between my brother and him and he goes to the Carstens and tells Mr. Carstens the state of affairs and Carstens gets scared and falls back on the whole proposition.

Q. Do you know what the agreement was between your brother and Mr. Carstens except on Al's statement? A. Just on Al's statement.

Q. You had no other knowledge of it?

A. I have no other knowledge of it.

Q. There has been rivalry between those two towns for a couple of years?

A. There certainly has to a certain extent.

Q. And the business has been drifting from Blackburn to McCarthy—which is the end of the railroad—for at least two years?

A. It didn't drift as long as the Blackburn road-house was running. [117—100]

Q. Blackburn was getting to be a pretty slow place last summer?

A. No, it was fairly good—it was getting its share of the business.

Q. Hasn't nearly all the business gone away from there?

(Testimony of H. M. Fagerberg.)

A. It has, since the roadhouse was knocked by the other gang—they accomplished their point.

Q. Wasn't it going away before that?

A. No, it was not.

Q. Weren't people moving from Blackburn down to McCarthy to a certain extent?

A. To a certain extent, some of them were, but the main business was conducted there.

Q. Did you see C. F. Wilt when he was up there last summer? A. I saw him, yes, sir.

Q. Did you talk to him?

A. Not to any great extent, I had a few words with him, that is all.

Q. Were you present at any negotiations between Al and Wilt?

A. I just heard part of it, I didn't pay much attention to it and he didn't pay much attention to me.

Q. You were considerably interested, as your property was to be transferred in the deal?

A. To a certain extent, yes.

Q. But you had very little to do with the business?

A. I didn't have nothing to do with it; if I went to them, they would say, "Go to Al," that is the situation, that is the satisfaction I would get out of them—he was looking after their end of it.

Q. Who said that, Wilt?

A. Practically—he practically told me that I was dealing with Carstens through Al, he was the man representing them—that [118—101] was my understanding of it, and if I went to them, he would say, "Go to Al, he is handling that end."

(Testimony of H. M. Fagerberg.)

Q. Is this statement correct? (Reading.) After a description of the negotiations—Fagerberg Brothers finally agreed to make a bill of sale to Thomas Carstens for the Nizina store and all the old original goods that were still left in the store and they agreed to pay the Carstens Packing Co. the amount that had been shipped to them in the spring of 1914—is that correct? A. Does that include me?

MR. DONOHUE.—What are you reading from?

MR. RITCHIE.—I am reading from some information given me—I am simply reading the question.

By the COURT:—If you want to use the paper, you can refresh your recollection by reference to the paper—you can ask him if certain things are so.

MR. RITCHIE.—This is not the foundation for any impeachment at all—I am seeking for information.

By the COURT.— I think the form of the question is objectionable.

MR. RITCHIE.—This is a general statement in writing by Mr. C. F. Wilt of his recollection of the transactions that took place last summer and I am founding my questions on the information he gave me; there is no intention of using it for impeachment because Mr. Fagerberg has never seen it—I am simply framing the questions on this information.

Q. Was there an agreement made by your two brothers to make a bill of sale to Thomas Carstens for the Nizina store and all the other goods that remained in it and that the consideration for this bill

(Testimony of H. M. Fagerberg.)

of sale was that Mr. Carstens would relieve you of all liabilities for the old debt owing on account of the Nizina store? [119—102]

A. All I know about that, Al came to me and said if I would turn that over to them, he would give me \$500 and I said, "All right, I will take \$500 for it and give them a bill of sale"; that is all I know about the affair and that proposition was put up to Foster, if I got the \$500 that settled it with me—I didn't care about the details at all.

Q. After the bill of sale was drawn and placed in escrow, was there anything said by you or by Al, in your presence, in the way of a promise to pay him every cent for the last bill of goods sent up there by Carstens?

A. No, sir, I never saw Wilt since; that morning I went away to Chititu and the time I came back he was gone—I never saw him since and don't know anything about it.

Q. Did you state, or were you present when Al stated, if he did, or was any statement made by either of you, that you had \$1,200 coming from the Shushana in a few days and you would apply that on account of the bill coming up?

A. No, I don't know anything about that.

Q. You made no such statement?

A. I made no such statement and don't know anything about it.

Q. As to the profits you could have made up there—I believe you stated you got \$4.00 a day, a dollar a day for a room and a dollar for meals and 75¢ for a

(Testimony of H. M. Fagerberg.)

bunk? A. Yes, sir.

Q. And possibly half of that and perhaps a little more is profit?

A. If I recollect I said \$1.50 is profit.

Q. You said first \$2.50 and then modified it to \$2.00 as I remember, but you have a right to change that if you wish, but would say the profit was \$1.50 a day anyway?

A. It was that anyway, that is a fair average of it. [120—103]

Q. What was the travel through there the year before? A. The travel was good.

Q. That was right after the Shushana rush?

A. Yes, sir. Church claims he cleaned up \$10,000 on the proposition while he was running it.

Q. There wasn't near as much travel last fall as there was the fall before, was there?

A. No, not as much—there was a stampede on then.

Q. How many people do you suppose came out of the Shushana and stopped at Blackburn and McCarthy between August and November, 1914—Can you form any estimate how many people came out, past Blackburn and McCarthy?

A. As to that I couldn't say—there must have been in the neighborhood, from the surrounding country, from six to 800 people.

Q. Where did these men usually stop? Don't a great many of them just siwash it, as is said, or do they nearly all stop at roadhouses?

A. Most of them last fall stopped at roadhouses.

(Testimony of H. M. Fagerberg.)

Q. A great many of them come in there and just take the train, without stopping?

A. Sometimes, if they happen to connect; they stay over night, they never get through in time to take a train right out.

Q. Your estimate of \$1.50 or \$2.00, whichever it is, you made on each guest, doesn't that depend a good deal on the number? A. To a certain extent.

Q. The expense of running the roadhouse is the same? A. Yes, sir.

Q. So if there is only one guest, there is no profit at all? A. Not as much, no.

Q. And if there were fifteen or twenty guests, there would be a big profit? [121—104]

A. Yes, sir.

Q. Your estimate of \$1.50 or \$2.00 profit is where there is a very considerable number of guests?

A. To a certain extent.

Q. What was the cost to you of a meal up there, aside from the labor bestowed on it?

A. Well, the meal would cost on the average besides— You mean without the labor?

Q. What would the goods cost, the grub itself up there—the freight is heavy up there?

A. Quite heavy, yes, sir.

Q. What is the cost of ham and eggs, for instance?

A. Thirty-five cents, about 35 cents.

Q. And with other things that go with it, a meal costs perhaps 40 to 50¢?

A. Perhaps, something like that, on the average.

Q. And if you serve a large number of them, there

(Testimony of H. M. Fagerberg.)

is a good profit? A. Yes, sir.

Q. If you serve only one or two, your salaries are going on just the same? A. Yes, sir.

Q. And the profit depends absolutely upon there being a considerable number of guests in the house?

A. It does, to a certain extent.

Q. Just tell us again what you figure you could have made out of the horses from August to November?

A. I figure I could have cleared \$300 a month on the horses, easy.

Q. Just at different kinds of freighting?

A. Just at different kinds of freighting.

Q. And if you were working for Al at \$100 you wouldn't get anything [122—105] more—you would simply get \$100 per month whether he made anything or not?

A. What have you reference to?

Q. You say you have lost a large amount of money because of loss of profits on account of this attachment. At the time the attachment was made, you were working for \$100 per month, were you not?

A. Why, at the time the first attachment was made, I was working at \$100 per month, but at the time the attachment was made on the roadhouse, I was in possession of the roadhouse myself and conducting it. Al had given up possession and threw up his deal with me.

Q. If there had never been any attachment, you would have gone on working for \$100 per month?

A. Yes, sir.

(Testimony of H. M. Fagerberg.)

Q. And that would have been the extent of your profit? A. Yes, sir.

Q. You would have worked for \$100 per month for the next three months? A. Yes, sir.

Q. So all you lost from August to November was \$100 per month by reason of the attachment?

A. And the value of the horses, the rent of the horses.

Q. But what you lost personally, by your own services, was a chance to work for \$100?

A. Putting it on a personal basis, yes, sir.

Q. And you consider you lost \$2.00 a day on each horse? A. Yes, sir.

Q. What were your sales the first year you were in that business up there at Chititu, the first year you were working there? A. The actual cash sales?

[123—106]

Q. Yes.

A. Well, it was close on to—from September first until January first, 1908, as near as I can recollect, it was in the neighborhood of \$1,800, cash sales.

Q. And what were the sales during the year 1908?

A. Why, something like \$2,800.

MR. DONOHOE.—He can look at the cash-book to refresh his memory?

By the COURT.—Yes.

MR. RITCHIE.—I want to know the exact facts as near as we can get them. I believe we will ask to have that book introduced as an exhibit.

By the COURT.—Very well, it may be received and marked Defendant's Exhibit Number 4. (It is so marked.)

(Testimony of H. M. Fagerberg.)

The WITNESS.—This includes some furs he shipped out during this time too; I will have to do a little figuring here, but the cash sales—that includes the furs left on hand there by Mr. Wilson too—\$2,794.02.

Q. That was the entire cash receipts?

A. Yes, sir, and that includes the furs.

Q. Now how much in 1909? A. \$2,629.63.

Q. How much in 1910, when you closed the store?

A. \$4481.41.

Q. That would be a total of \$11,700.?

A. Yes, sir.

Q. At what profit did you sell those goods?

A. Well, we based the sales at Valdez prices and 15¢ a pound and freight added.

Q. At what profit over the inventory?

A. I didn't figure that, to be exact.

Q. About what percentage of advance over the inventory? [124—107]

A. About 25%—20% if I recollect right; that was the actual basis as it was figured out.

Q. About what were those furs sold for, as near as you can tell; there is a dispute between Mr. Donohoe and myself as to what you said about that \$1,800; I understood you to say you took in about \$1,800 including what you took in for furs left by Mr. Wilson?

A. No, there is \$2,794.02, that is in 1908—that includes the furs the value of the furs, of Wilson's—I have some here, personally, furs I got myself; this is the value of the furs Wilson left there—\$893.64 and

(Testimony of H. M. Fagerberg.)

the value of my own furs is \$123.

Q. How much did you sell for the Carstens, that is out of the Carstens stock—the furs left by Wilson belonged to Carstens, that was in stock?

A. Yes, sir.

Q. What did you sell between the first of September 1907, and the end of the year that belonged to the Carstens business, that is, the Nizina Trading Company business?

By the COURT.—It would be approximately \$2,000 would it not?

A. Practically that—a little less, about \$1,800.

By The COURT.—Between 18 and \$1900, then?

MR. RITCHIE.—Yes, sir.

Q. It would be between 1,500 and \$2,000?

A. Yes, sir.

Q. During the three years you were there you took in something like \$11,500? A. Yes, sir.

Q. Was any of that ever remitted to Carstens?

A. I couldn't say as to that, I don't know anything about it.

Q. It was all turned over to Al?

A. Yes—I don't believe it was, to tell you the truth; it was [125—108] reinvested in the business.

Q. It was all turned over to Al?

A. Yes, sir.

Q. Except the \$3,800 you had when you quit?

A. Yes, sir.

Q. And you ultimately turned that over to Al?

A. I ultimately turned that over to Al, but my

(Testimony of H. M. Fagerberg.)

understanding was—

Q. Go ahead.

A. My understanding was it was to be reinvested in the business.

Q. In all your business up there, Al did the financing?

A. Yes, sir—I didn't pay much attention to it.

Q. When you left Chititu in 1910 what was the value of the stock that was left—how much of it remained there?

A. I don't know as to that, I couldn't say the exact value of it.

Q. Was it pretty well gone at that time?

A. In certain lines it was and other lines it was not.

Q. There was considerable stock left even then?

A. Yes, sir.

Q. What has become of it since?

A. I don't know; part of it was sold and part of it is there yet and part of it got old and had to be chucked out. The only things of any real value, what you could say was salable stuff, was the flour and the milk, that is, the Eagle milk; the Carnation milk, you know the condition of that; after it is there a few years it freezes once or twice and spoils and sours. The fruit was all this old style—it was put up in the old style, in gunnysacks or canvas bags and you can imagine the condition of that when it has laid under canvas, under a canvas roof, etc.—and it wasn't a first-class article in the first place, and the same way with hams and bacon and lard

(Testimony of H. M. Fagerberg.)

and butter—you can imagine [126—109] the state of that after five or six years; the brine had practically run off the butter and you can imagine the state of that; a whole lot of the stuff was sold for dog feed.

Q. As I understand it, the inventory showed something like \$30,000 wholesale, and freight, in 1907?

A. Perhaps it did—I don't know that to be a fact, but I will admit that on the face of it.

Q. And you sold at a profit of 25% \$9,000 worth out of the inventory, leaving approximately \$20,000 worth of the inventory—now what became of that \$20,000 worth—did it appreciate or depreciate in value, was it wasted or was a large part of it sold?

A. As to that I couldn't say; as I said before, there is some of it left, some was sold for dog feed and some of it was thrown out in various ways.

Q. Your salary for the three years, from 1907 to 1910, was \$4,500? A. Practically, yes.

Q. And you sold \$11,500 worth of stuff, so that there is about \$7,000 besides your salary which you were holding at that time or had turned over, but while you were still holding the \$3,800 there was \$7,000 that you had turned over to Al from time to time? A. Yes, sir.

Q. And as far as you know, nothing was ever remitted outside?

A. Not as I know of; the money was reinvested in new stock and put into the business again. Take the first year, 1908 and 9, that money was put into new

(Testimony of H. M. Fagerberg.)

stock and went back into Chititu.

Q. And yet all this time the stock was largely depreciating? A. Largely depreciating, yes, sir.

Q. Now, is it not a fact that you started out as you say in 1907 [127—110] to work for a salary of \$1,500 a year and that you never got anything out of it but your board, but that all the money was being taken over by Al and used in ways you knew nothing about, and that he was investing in a great many other things, and was spreading out as a great many men do, trying to get ahead in this country, and you couldn't see that you were getting anything out of it but your board and you demanded an interest in the thing and you then became a partner instead of working for a salary?

A. No, I demanded my money at the end of 1910.

Q. And yet at the end of six years you turned everything over to him—from 1907 to 1913, when you got the bill of sale, you were working for your board—turned over all the money practically to Al, and yet had no interest in the business?

A. I had no interest in the business. I don't believe in lawsuits. The court is the last place I would go to if I had my say about it. Sometimes a man is forced to; when driven in a corner he has got to fight; and I went to him and tried to make a settlement at different times with him and demanded my money, but if I went through with it it would cause a worse spreading out than it has now, and I thought the best way as long as I was in it was to try to get along and get my money out of it in a satisfactory manner,

(Testimony of H. M. Fagerberg.)

where it wouldn't cripple every one and myself too, and I wouldn't get anything out of it or anyone else if it got into the court.

Q. You told me yesterday that in the fall of 1910 you had \$3,800 in your possesison and more than that was due you for wages? A. Yes, sir.

Q. But Al forced it out of you? A. Yes, sir.

Q. Do you wish to be understood as saying, when you had at least [128—111] that amount due as wages, you turned it over to Al who had never paid you anything but your board and went to work for him in the logging camp and building a roadhouse, still went to work for him and gave him back the \$3,800?

A. I looked at it in this light; he came at it in this way and perhaps you can understand things. He says, "I put you in here"—at the time we had a kind of rumpus—"You were broke," he says, "and I put you in here and gave you a chance to make this money, and now," he says, "when you have made this money and there is a chance to make money—this has been a losing proposition" he says to me—"you draw out, take your money," he says, "and leave me in the lurch with Carstens and the whole thing on my hands—you take your money and go off; when a man comes at you that way, what are you going to do?

Q. You knew most men would say, "If I am going to take a chance on the money, I want a share in the profits"—is that what you said?

A. No, sir, it certainly is not.

(Testimony of H. M. Fagerberg.)

Q. You stand then on your proposition, that at no time were you a partner of Al Fagerberg?

A. I certainly do.

Q. That you worked for him for six years, for him and some more or less visionary partner of his in Seattle, whom you never saw and never corresponded with? A. Yes, sir.

Q. You never got any money out of either of them, but your board; he owes you \$3,800 which you gave back and you never had any business interest in the possible profits of this vast ramification of business that Al was trying to transact?

A. Not a bit; at that time I was aware of the Carstens Packing Co. [129—112] in 1910—and my brother will admit then I did not want to have nothing at all to do with the Carstens Packing Co. only on a wage proposition and I wouldn't go into business with them at all, under any consideration; if I knew they were in a concern I would get out, believe me, before they got a chance to hook me.

Q. That was your attitude toward them in 1910?

A. That was my attitude toward them in 1910.

Q. But you worked for them three years afterwards without wages?

A. Yes, I did, out of consideration for my brother—that was the facts of it.

Q. Now, you know nothing about this shipment of goods by Carstens in the spring of 1914, except that they were received there and you helped freight most of them into the Chititu?

A. That is all I know in fact about them.

(Testimony of H. M. Fagerberg.)

Q. Do you know what part of them went into the Blackburn store? A. I do not.

Mr. RITCHIE.—That will be all at this time.

Redirect Examination.

(By Mr. DIMOND.)

Q. Now, I think you have made a mistake, or I misunderstood you, concerning the amount you took in in the store at Chititu between 1907 and 1910. Do I understand you rightly that you took in \$1,800 from September, 1907, to January, 1908, January 1st, 1908?

A. To December 31, 1908, not January first, 1908.

Q. How much is that?

A. This includes the furs—it is \$2,794.02.

Q. That is between September 1, 1907, and December 31, 1908? A. Yes, sir.

Q. Between January 1, 1909, to December 31, 1909?
[130—113]

A. This is January first to September 9, 1909—\$2,629.63.

Q. Now, go from that date on to the fall of 1910?

A. \$4,481.41.

Q. Making a total of \$9,905.06 instead of \$11,500—where did you get that \$1,800 item from?

Mr. RITCHIE.—I see the point—the \$1,800 should be stricken out.

Q. Do you know how much of the stock of these goods was put in in 1908, approximately?

A. No, I do not.

Q. You don't know the amount of new stock put in in any year? A. No, sir.

(Testimony of H. M. Fagerberg.)

Q. But you did bring in new stock?

A. Yes, sir.

Q. Now, this inventory of \$30,000 made in 1907, upon which you seem to be very uncertain about—what did you base that inventory on, if you know?

A. It was just upon their prices, their selling prices at that time.

Q. Were the prices afterwards materially reduced, or reduced at all? A. Yes, sir.

Q. They were reduced about 50%, were they not?

A. About 33 $\frac{1}{3}$, I think—that is what I figured on all the way through.

Q. About what part of this stock became worthless and had to be thrown away, do you know how much there was?

A. There was several cases of butter if I remember right, something like half a dozen cases of butter—the butter, lard, hams and bacon were practically all sold for dog feed and the Carnation milk was chucked out; there was corned beef and such as that that was thrown out; herring was thrown out. There is dried [131—114] fruit still in there yet, several hundred pounds yet. I think perhaps the whole bunch of dried fruit is there yet—it is wormy. There was graham flour; quite a bit of that was unsalable and sold for dog feed.

Q. You stated that the principal articles of value, practically the only articles of value, were flour and Eagle milk?

A. That is, that were salable—that you could sell.

Q. What about the hardware?

(Testimony of H. M. Fagerberg.)

A. There is no sale for that and practically all the hardware is there yet.

Q. Do you know what that hardware inventoried?

A. No, I couldn't give it offhand.

Q. You have no idea? A. No.

Q. What about those liquors—what would they inventory?

A. I forget the exact inventory of them.

Q. You have a very large quantity of liquors in there yet?

A. There is quite a bit in there yet, yes, sir.

Q. What became of the rest of it?

A. I gave a big lot of it away.

Q. You gave some to me?

A. Yes, I gave some to different people that came along; I would set out the bottle and give them a drink.

Q. In what condition was this butter?

A. Bad condition.

Q. Now, concerning these billheads—were the Fagerberg Brothers billheads the only ones you used? A. No.

Q. What else were used?

A. The old Nizina Trading Co. and other blanks and one thing and another like that. [132—115]

Q. Who made out the bill for the Victor Olsen account, do you recollect?

A. I believe my brother did; I had nothing to do with that.

Q. Now, why is it that you deposited money in the names of both yourself and your brother?

(Testimony of H. M. Fagerberg.)

A. I carried an account in my own name for the reason that I had to have something where I could make change. There was no cash in the country, it was practically all checks, when a man came in and paid his bill, I would make out his bill and make out my own check to cover the balance and that kept the cash in the country and was a convenient way of doing it; what I didn't need I put in my brother's name.

Q. Now, you had considerable difficulty with Al; he collected the money for six years and you never did anything as you have stated until 1913. How did you come to do business with him in 1914? You have stated at various times during the course of this examination that you worked for Al during all the years from 1907 to 1913 and never got your wages out of him. Now, with that fact in view, how did you come to trust him so far as to do any business with him at all in the spring of 1914? What did you have to go on? What was your reason for giving him a lease of all this property and taking the chances of not getting anything out of him?

A. When he came back in the spring of 1914 with this proposition of incorporation, I said—How do I know that you are representing the Carstens? You claim you are? “Well,” he says, “Harry, all I can say is this; I have nothing to show you, but I have a carload of oats down here that I have to pay \$1,500 on; if I draw a sight draft on them and that is accepted by them and goes through, will you believe that they are back of me then”; and I says, “Yes,”

(Testimony of H. M. Fagerberg.)

and he drew this draft and sent it out and [133—116] it went through and he got the carload of oats released and I naturally supposed it was a cinch.

Q. At the time you made this lease to him as you have testified, you expected that it would last only a short time?

A. I didn't expect it would last over two months at the very most.

Q. Why was it that this property that was worth about ten thousand dollars, why were you willing to sell for \$7,000?

A. I was willing because I wanted to go outside. I had a proposition from my father. He has considerable real estate around Seattle and he said if I could get a little cash money and come out there, he would back me outside and I wanted to get out and let Al and Carstens conduct it themselves.

Q. How long was this lease to run? I suppose the lease speaks for itself. This agreement you say began about the 4th day of March?

A. Yes, sir—it wasn't actually written up until the 23d day.

Q. The duration of this lease shall be six months—is that six months from the date of it or six months from the 4th day of March?

A. The 4th day of March.

Q. It was to terminate on the 4th day of September at all events? A. Yes, sir.

Q. Do you recollect what you paid for those horses that were attached? A. For one team I paid \$285.

(Testimony of H. M. Fagerberg.)

Q. When did you buy them?

A. That was in the fall of 1913.

Q. Are horses worth more or less in the fall than they are in the spring? A. Less. [134—117]

Q. Considerably less?

A. Considerably less, yes, sir.

Q. Were you around McCarthy very much in the spring of 1914 after you leased the property to Al?

A. I was not, no.

Q. Where were you?

A. I was on the Shushana trail most of the time.

Q. You were packing mail in there and freighting there? A. Yes, sir.

Q. You stated on cross-examination that it took you six days to make a round trip with the mail into the Shushana?

A. It takes a little longer than that.

Q. It takes about six days to go one way, doesn't it? A. Yes, sir, that is one way.

Q. That is what you meant? A. Yes, sir.

Q. You stated you put up a sign, See Fagerberg, something to that effect, in September—what year was that?

A. It was in the latter part of 1913 or the first part of 1914, I am not positive which; it was a freighting sign.

Q. Now, you have stated on your cross-examination to Mr. Ritchie that you calculate the store and the fixtures, and I think the stock was included in it, at Nizina, at \$2,000 and in spite of that, you agreed to take about \$500 for it when Mr. Wilt was up there;

(Testimony of H. M. Fagerberg.)

how do you account for such a great discrepancy between the real value and the amount you were willing to take?

A. Well, I didn't have much use for it and I was willing to take \$500. I thought I could use the \$500 to better advantage somewhere else than I could over there.

Q. This property was worth what you could get for it? [135—118]

A. Yes, sir, this property was worth what you could get for it.

Q. Not what you put into it? A. Yes, sir.

Q. You have spoken of the Borger-Struck mill and of an interest in it—what is your interest in that. A. A one-third interest.

Q. And some of these liabilities you mention are

Q. And some of these liabilities you mention are against that mill? A. Yes, sir.

Q. State whether or not there are any entries in that book, any charges made against J. A. Fagerberg for your wages? A. Yes, sir, there is.

Q. Read them.

A. February 20, 1908, H. M. Fagerberg Salary account \$95.95 and then it goes on further down May 20, 1908, H. M. Fagerberg Salary account \$233.35.

Q. Was that to apply on your salary of \$1,500?

A. Yes, sir, that was to apply on my salary of \$1,500.

Q. Are these the only items that appear?

A. Yes, sir, these are the only items that appear.

Q. Why didn't you continue to keep up those items?

(Testimony of H. M. Fagerberg.)

A. I wasn't very much of a bookkeeper and just let it slide. There wasn't much doing and I went at it in a different way, just kept the actual cash sales and transfered it through the bank and the check stubs.

Q. The defendant introduced in evidence here, Defendant's Exhibit Number 3; it is a check made out to Fagerberg Brothers and signed E. E. Ritchie and endorsed on the back Fagerberg Brothers by H. M. Fagerberg, member of firm—Will you state how that check came to be endorsed that way?
[136—119]

A. This check was handed to me by Mr. Ritchie here in Valdez one trip I made here for horses to go into the White River with a hunting party; I was after horses at the request of my brother. At the time I left there he gave me \$50 and he says, "Go out and get five horses to take this party in and don't come back without them and go anywhere you can get them"; and I went to Chitina and tried to get horses from Nafsted and couldn't get them and I came in here on this \$50 he gave me and I met Mr. Ritchie on the street here in Valdez and he says, "By the way, I have a little money here for you on the Victor Olsen account"; as near as I can recollect he says he had been having some business with Al on it; and I says, "All right, it will come in handy," and I went up to this office and he gave it to me—made it out Fagerberg Brothers. I went to the bank and handed it in to the cashier of the Blum Bank—I don't know the gentleman, never done business with

(Testimony of H. M. Fagerberg.)

the Blum Bank up to that time; and I endorsed it Fagerberg Brothers and he handed it back to me and he said, "Are you a member of the firm"? "Well," I says. "I don't know whether I am or not," but I says, "I will take a chance of signing it," and he says, "You had better sign it that way" and I endorsed it Per H. M. Fagerberg Member of firm, because I neded the money on my expenses going back. It was an account of Al Fagerberg, my brother; the money was used for roadhouse expenses, shoeing of horses at Chitina and the paying of the railroad fare for the horses from Chitina to McCarthy. Next morning I went on the road and never paid any more attention to it.

Q. Did he refuse to pay the money unless you did endorse it that way?

A. That is what he did he handed it back to me and asked me to endorse it that way. [137—120]

Recross-examination by Mr. RITCHIE.

Q. Who was the teller that paid you that check under those circumstances?

A. I didn't know the gentleman.

Q. Do you know whether he is in the bank now?

A. I couldn't say, I was not down there and don't know.

Q. Was it J. W. Gilson, or are you familiar with the bank now? A. No.

Q. You couldn't say?

A. I couldn't say, I don't know.

Q. That mill, you say you owned one-third of it; who owns the other two-thirds?

(Testimony of H. M. Fagerberg.)

A. Struck and Borger.

Q. When you bought these horses, what year was that, 1913? A. Yes.

Q. Where did you get the money to buy them?

A. Money I made myself since I got the business.

Q. After you got the bill of sale you held all the money? A. Yes, I held all the money.

Q. You testified yesterday that you understood all those years, from 1907 to 1913, that there was a partnership of some kind between your brother and the Carstens Packing Company? A. Yes, sir.

Q. And that the Carstens Packing Co. owned a half interest in the business?

A. To that effect; yes, sir.

Q. That was your understanding?

A. That was my understanding.

Q. Did you ever make an effort to get a bill of sale from the Carstens Packing Co. for half of it?

A. Me? [138—121]

Q. Yes—you took a bill of sale from Al for the whole of it; in the summer of 1913 you accepted and placed on file a deed or bill of sale for the whole of this property which Al Fagerberg said he owned in the District of Alaska; it was a bill of sale covering the whole of it, but you say you knew that the Carstens Packing Co. owned half of it—have you ever made an effort to get a bill of sale for that, for their half, or get from them an acknowledgment that Al Fagerberg was authorized to make it?

A. No, I have not; when this thing was turned over to Al, the whole thing was deeded over to him.

(Testimony of H. M. Fagerberg.)

As I understood the proposition, it had been turned over to him and he was representing them; they said, "Take it and do the best you can with it," and my understanding of the proposition between him and them was, that he was to split up half with them, if he could make it go—they relied upon him to pull them out of a bad mess and they turned the whole thing over to him. I was dealing with him. If I had gone to Carstens with any kind of a proposition at all, he would have referred me back to Al—Al was handling that end of the business—"You go and deal with Al," that is the answer I would have got from Mr. Carstens.

Q. Does your father live in Seattle? A. Yes.

Q. Has he lived there all these years?

A. For the last forty-five years.

Q. Did you ever write to him and ask him to see Thomas Carstens or the Carstens Packing Co. and find out where you stood with them?

A. No, I didn't bother my father about it, I attend to my own business—I don't bother my old father about it. [139—122]

Q. Although you knew that the Carstens Packing Co. had a half interest in this property, you didn't think it was necessary to get a bill of sale from them or any statement that Al Fagerberg had authority to make it? A. No, I did not.

Q. You took Al's word for it, as you did for everything?

A. Al's word and my understanding at the time of the conversation between Al and Mr. Myers on the

(Testimony of H. M. Fagerberg.)

boat and he showed me the bill of sale at that time.

Q. When did you get the interest in the sawmill?

A. In 1913—that is when we started in the business of the sawmill.

Q. What time of the year?

A. Along in the summer, that is when the mill was started up.

Q. In July? A. In July.

Q. What did you pay for the interest?

A. It was gradually worked up; the mill has practically paid for itself—it is paying for itself, it is not paid for yet.

Q. You didn't have to put up any money in advance?

A. No—I borrowed what money there was, I can show that.

Q. Now, you say that in 1910 the reputation of the Carstens people was very bad up in that country and as far as you knew you wouldn't trust them for anything—from what did you get that impression?

A. The surrounding country.

Q. Do you mean by something somebody had told you?

A. To a certain extent and their dealings in other ways; I was afraid of them.

Q. But you kept on working for them for several years afterwards?

A. To a certain extent; you can put it that way—it wasn't out of [140—123] consideration for the Carstens Packing Company.

Q. What particular things did the Carstens Pack-

(Testimony of H. M. Fagerberg.)

ing Company do to you that caused you to have such a bad opinion of them? A. Nothing particular.

Q. They had left a \$30,000 stock of goods up there in the custody of yourself and brother for three years and had not received a cent for them—is that what caused you to be so hostile to them?

A. No, not necessarily; it was their way of doing business I didn't like.

Q. You say you did the business with them wholly through your brother and never attempted to get into any communication with them directly?

A. No, but he got his instructions from the Cars-
tens, believe me—he went out every fall.

Q. Do you know what those instructions were?

A. To a certain extent I do.

Q. From what?

A. Just by his conversation and by some letters that came up there later from Mr. Carstens.

Q. You have seen letters from Mr. Carstens?

A. I have, to him.

Q. Have you them in your possession?

A. No, I have not.

Q. Do you know whether Al has them?

A. He has some of them; they will come up later on.

Q. At the time this attachment was made and for a year or two beforehand, is it not true that around McCarthy and Blackburn, in that country, you were universally known as Fagerberg Brothers?

A. To a certain extent, yes. [141—124]

Q. And is it not a fact that your neighbors up

(Testimony of H. M. Fagerberg.)

there dealt with you as Fagerberg Brothers?

A. To a certain extent, yes; a good many of them, however, were aware of the fact how it stood, some of them.

Q. Wasn't it generally understood that Fagerberg Brothers owned the freighting business and road-house and were running it together?

A. Yes, that is the way it was understood.

Mr. RITCHIE.—That's all.

Witness excused. [142—125]

[Testimony of J. A. Fagerberg, for Plaintiff.]

J. A. FAGERBERG, called and sworn as a witness in behalf of the plaintiff, testified as follows:

Direct Examination by Mr. DONOHUE.

Q. Your name is J. A. Fagerberg? A. Yes, sir.

Q. You are commonly known in this vicinity as Al Fagerberg? A. Yes, sir.

Q. You were defendant in an action brought in this Court last July by the Carstens Packing Company, a corporation? A. Yes, sir.

Q. That is the action in which the writ of attachment was levied on the property involved in this controversy? A. Yes.

Q. Are you acquainted with Mr. Thomas Carstens? A. Yes, sir.

Q. He is president of the Carstens Packing Company? A. Yes, sir.

Q. How long have you known him?

A. Ten or twelve years; that is, personally and intimately acquainted with him for ten or twelve years—I have known him for the last thirty years.

(Testimony of J. A. Fagerberg.)

Q. And are you acquainted with Mr. Prater, the treasurer and secretary of the Carstens Packing Company? A. Yes, sir.

Q. How long have you known Mr. Prater?

A. About twelve years.

Q. Did you have any business relations with Mr. Prater in 1906?

A. Yes, Mr. Prater was a partner of mine in 1906.

Q. To what extent?

A. He had a half interest in a bunch of cattle I took to Fairbanks— [143—126] an interest, rather; he got a quarter of the profits and I got three-quarters.

Q. And that partnership was terminated when?

A. When I went out in the fall of 1906, sometime.

Q. Now, in 1907, did you have any business negotiations with Mr. Prater representing the Carstens Packing Company in regard to the store at Chititu, Alaska, known as the Nizina Trading Company store? A. Yes, I did.

Q. Just state the conversation had at that time?

A. Well, I came down to the office one morning—

Q. This conversation took place in the City of Seattle, at the office of the Carstens Packing Company?

A. Yes, sir. I came down to the office one morning and Bill said to me—that is Mr. Prater—“Where are you going this summer; better let me go in with you and go into Fairbanks.” I said, “I think I will go alone, take a small bunch of cattle and go into the copper country.” The railroad is

(Testimony of J. A. Fagerberg.)

building up there and I says, "There is a chance to do a meat business there and would rather go alone." He says, "By the way, you know Myers; well," he says, "He has got that old stock in there and they owe the firm six or seven thousand dollars and Wilson is going to quit and I would like to have you take hold of it and do something with it."

Q. What company or firm did he refer to?

A. The Nizina Trading Company owing five or six thousand dollars to the Carstens Packing Company.

Q. In response, what did you say?

A. I said, "I don't care to go in there myself, there aint enough in it for me, but I have a brother and will talk it over with him and if he wants to undertake it, why, I will help him with [144—127] it and see that it goes through all right."

Q. You had a business of your own?

A. Yes, sir.

Q. What was that business?

A. I was shipping cattle in the summer time up into the copper country and in the summer of 1906 into Fairbanks.

Q. Driving the cattle through the country and selling them where you could? A. Yes, sir.

Q. Did you again have a talk with Mr. Prater on this subject?

A. Yes, I had a talk with him afterwards, after I saw Harry and I told him Harry would take it, but I said, "I won't have anything to do with Tom Carstens or Myers on the proposition, but I will leave it to you and the Carstens Packing Company and

(Testimony of J. A. Fagerberg.)

I want a bill of sale for the old Nizina Trading Company stock and want full power to handle it as I wish and will do the best I can to get something out of it.”

Q. What was said in that conversation about the salary that H. M. Fagerberg was to have?

A. He said that the salary would be the same as he paid Wilson, \$1,500 a year.

Q. And after the salary was paid, if there were any profits, what was to become of those?

A. If we made anything out of the deal, for my part of looking after it, I was to get half and they were to get half.

Q. Who do you mean by they?

A. The Carstens Packing Company.

Q. Now, the night you were sailing from Seattle with your cargo of cattle, did Mr. Myers or the Nizina Trading Company deliver to you any paper on board the boat?

A. Yes, sir, that was just a little before I was starting to load [145—128] the cattle and after I got through, he came around and took me into the stateroom where Harry was and he delivered to me the bill of sale and I told him before Harry, “I am not responsible in any way for this old Nizina Trading Company stock but will do the best I possibly can with it.”

Q. You and Harry came up on that boat?

A. Yes, sir.

Q. And you landed your cattle where?

A. Valdez.

Q. And you took them in over the trail?

(Testimony of J. A. Fagerberg.)

A. Yes, sir.

Q. When you reached the Kotsina River, did you have any further negotiations at that point with your brother in regard to him taking charge of the Nizina store for you? A. Yes.

Q. State what that was?

A. When I got to the Kotsina, at Willow Creek, I began to find out I had too many cattle; I couldn't dispose of them all at Kennecott, and I figured on Gray taking some, but he had a shipment of his own and I had to back down; that is, I had to come back out of the country with the cattle, so I made arrangements with Harry to go in and take it over and gave him a letter to Wilson authorizing him to receive the stock and turn the thing over to him.

Q. What was your agreement with Harry Fagerberg at that time, if any, in regard to his wages?

A. I told Harry I would give him \$1,500 a year and "you do the best you can out of that old stock in there and keep out of trouble—don't get into any trouble with Esterly and Kernan and use your own name, but in any event you want to keep out of trouble." I [146—129] gave him his instructions and told him he would get \$150 per month in the summer and \$100 in the winter or \$1,500 a year and he could have what furs he could catch or anything that way.

Q. What did you say to him in case the profits or sales of the store did not amount to \$1,500—what would become of his wages?

A. If there wasn't any possible chance to get any-

(Testimony of J. A. Fagerberg.)

thing out of the store, I would guarantee his wages out of the cattle business—I would pay it out of my cattle business.

Q. You didn't go into the store at that time?

A. No sir.

Q. You were not there when the inventory was taken? A. No, sir.

Q. When after this last conversation you had with H. M. Fagerberg did you arrive at Chititu?

A. It was in the fore part of February, I think, in 1908.

Q. What was the occasion of your going there?

A. I simply went in there to see what the stock was and see what they had to have in there for the summer and take care of things, look after it.

Q. How long did you stay there?

A. I think I was there one day to rest up.

Q. And H. M. Fagerberg was then in charge of the stock? A. Yes, sir.

Q. Did you take in the year 1908, take any stock of new goods into the store, at your own expense?

A. Yes, sir.

Q. State the amount, if any, new stock of goods you added to the stock, the old stock, in the year 1908?

A. I took in about \$800 worth of stuff that I had taken from my own money, taken from Valdez, when I came out. [147—130]

Q. Did the Carstens Packing Company add any new stock that year? A. No, sir.

Q. In 1909 was there any new stock added to the old stock?

(Testimony of J. A. Fagerberg.)

A. Yes, I took in something like \$2,200, in that neighborhood.

Q. At whose expense? A. My own expense.

Q. Did the Carstens Packing Company add anything to the old stock there that year?

A. No, sir.

Q. In 1910 was there any new stock added?

A. Yes, sir.

Q. By whom and at whose expense?

A. At my expense.

Q. About how much?

A. About 35 or \$3,600, as near as I can recollect.

Q. Did the Carstens Packing Company or the Nizina Trading Company add any new stock that year? A. No, sir.

Q. Up to 1910, how much was the greatest amount of new stock added to the old stock at your own expense?

A. Between six and seven thousand dollars.

Q. Was Harry Fagerberg up to this time paid any part of his wages while there? A. No, sir.

Q. Did you pay him or allow him any wages out of the returns? A. No, sir, I did not.

Q. What became of the money that Harry Fagerberg received for the sale of goods there up to this time?

A. It was turned over to me to replenish the old stock. [148—131]

Q. And you put it back into stock?

A. Yes, sir.

Q. Did you each year during 1907, 1908, 1909 and

(Testimony of J. A. Fagerberg.)

1910 make trips to Seattle? A. Yes, sir.

Q. Did you from time to time have interviews with Mr. Prater and Tom Carstens, the officers of the Carstens Packing Company? A. Yes, sir.

Q. Did you make reports to them in regard to the affairs of the Chititu store? A. Yes, sir.

Q. Did you ever at any time since the transaction took place in 1907 have any other or different arrangement or arrangements with Thomas Carstens or the Nizina Trading Company or the Carstens Packing Company than the one to which you have testified? A. No, sir.

Q. In the summer of 1910 did you and H. M. Fagerberg at Chititu have some controversy or argument regarding the payment of wages due to H. M. Fagerberg?

MR. RITCHIE.—We object to that as leading

Q. Did you have any conversation about the wages due to H. M. Fagerberg in the summer of 1910?

A. It was the fall of 1910.

Q. In the fall of 1910? A. Yes, sir.

Q. State what that conversation was as near as you can recollect at this time?

A. I had been out along the Fairbanks trail and delivered my bunch of cattle there at the roadhouses and came back here and instead of going to Seattle—
[149—132]

Q. Tell the conversation without preliminaries?

A. The conversation was, when I met Harry at Mile 182 we had a genuine right to scrap.

Q. This was in the fall of 1910?

(Testimony of J. A. Fagerberg.)

A. This was in the fall of 1910. I told him what I was going to do, that I was going to put in the place at Kennecott and the Carstens Packing Company was in on it and Harry, said, "To hell with the Carstens Packing Company and you too! I have \$3,800 and you can go straight plumb to the devil."

Q. Why was he holding that \$3,800?

A. For his back pay.

Q. What was the final outcome in regard to that \$3,800?

A. The final outcome of it was, after I cooled down and had a good square meal, I talked him out of it and I told him I would put him in there and give him this chance; I had been stung with the proposition and when there is a chance there I will put it into the business and his money was all right, it was as good as getting out for himself and I talked him out of it, and he turned it over to me—I happened to be the stronger of the two on it.

Q. He turned it over to you? A. Yes, sir.

Q. That money you did use in the business?

A. Yes, sir, to replenish the stock from time to time at Chititu.

Q. Did you have any arrangements with Thomas Carstens or the Carstens Packing Company in regard to grubstaking any men with this stock of goods in there or going into mining ventures in that section of the country? A. Yes, sir.

Q. Explain that [150—133]

A. In the winter of 1909 and 1910 I wasn't getting my money back that I was putting into the new

(Testimony of J. A. Fagerberg.)

stock. I goes to Prater and kicks and he kinder shoved me over to Tom Carstens and I went over to see Tom at Tacoma and Tom said, "Al, for Heaven's sake, do anything you can with it, give it to prospectors or anything, turn it over so you will get rid of it." I told him the old stock was getting old and the tin was rusting, the butter was worthless, the dried fruit was wormy and I can't do anything with it and he says, "Do the best you can with it."

Q. And pursuant to that, did you grubstake some people with parts of this stock?

A. I have on various occasions.

Mr. RITCHIE.—When was that conversation?

A. That conversation was in the winter of 1909 and 10.

Q. And did you become interested in some mining ventures there? A. Yes, sir.

Q. And what interest did Tom Carstens and the Carstens Packing Co. have in them?

A. The Carstens Packing Co. was square even-up to the board with me and had half an interest in it—just as much interest as I did.

Q. Did these mining ventures that you became involved in there cost you considerable money in the way of doing development work or otherwise?

A. Yes, sir.

Q. State about how much money you have dropped on that—in development work?

A. On the Seattle Gulch property I spent \$1500 in one year and the Krumm property stands me in

(Testimony of J. A. Fagerberg.)

something like six or seven thousand dollars.

[151—134]

Q. This Krumm property is now known as the Telurium Mines Company? A. Yes, sir.

Q. How much do you estimate the total sum you dropped in connection with these properties?

A. Eight or nine thousand dollars.

Q. Where did you get that money?

A. I naturally got it out of my cattle business and out of the new stock I was putting in there and what money I could make in business.

Q. In Alaska? A. Yes, sir.

Q. The Carstens Packing Company never furnished any part of it? A. No, sir.

Q. Or Thomas Carstens? A. No, sir.

Q. Now, after you and H. M. Fagerberg had this difficulty in 1910, in the fall of 1910, did H. M. Fagerberg continue in your employment?

A. Yes, sir.

Q. In what capacity did he work, or where did he work after that?

A. He worked that winter at Blackburn, getting out the logs and that spring we freighted the outfit over to Chititu.

Q. You mean the spring of 1911?

A. The spring of 1911—he was over there at Chititu from the first of March until along in April some time and I took him out of there then, I couldn't stand \$150 a month there in the summer time and put in a cheaper man and he went back to Blackburn.

Q. That virtually severed H. M. Fagerberg's con-

(Testimony of J. A. Fagerberg.)

nection with the Chititu store?

A. Yes, sir. [152—135]

Q. What was he principally engaged in after that until July, 1913?

A. In 1911 after he came back from Chititu, about the first of April, we started to put up the building at Kennecott, at Blackburn; he was there and I done the packing and Joe Deschamps and a fellow named Chris Wilson helped a while and Harry done the cooking—we had a tent there—done the cooking and put up the roadhouse.

Q. That was in Blackburn? A. Yes, sir.

Q. You got that house constructed in the fall of 1911? A. Yes, sir.

Q. Did you open it up for the accommodation of guests? A. Yes, sir.

Q. Did you run it yourself on the start?

A. Not on the start I did not.

Q. Who did run it?

A. Harry was in charge of the house at the start and during construction.

Q. When did you rent it?

A. I rented it in the fall of 1912.

Q. In the spring of 1912 did you and H. M. Fagerberg have any difficulty again over his wages?

A. Yes, sir.

Q. State about when that occurred?

A. That happened up there at the Blackburn roadhouse.

Q. About what time?

A. It was along in February, 1912.

(Testimony of J. A. Fagerberg.)

Q. And did you have any serious difficulty at that time? A. Yes, we did.

Q. Had another fight?

A. We had another scrap. [153—136]

Q. Mr. Brock of Cordova appeared on the scene shortly after that?

A. Yes, I wired for Mr. Brock myself.

Q. Did he take any part in adjusting the settlement between you and H. M. Fagerberg at that time?

A. He did; he wrote out a contract at that time, as near as I can recollect.

Q. Do you remember in general the terms of this contract of settlement between you and H. M. Fagerberg at that time?

Mr. RITCHIE.—We object to that; if they have a contract, let them produce it.

Mr. DONOHOE.—The previous witness has testified that the contract was delivered to him after being signed and he has made search for it and couldn't find it.

Q. Do you know what became of that contract after it was signed?

A. No, Harry got it and that is the last I know anything about it.

Q. You have never seen it since?

A. I have never seen it since.

Q. Have you any knowledge now where it is?

A. No, I have not.

Mr. RITCHIE.—I am inclined to think that this is inadmissible. I am unable to see how a new arrangement, wholly between themselves, between Al

(Testimony of J. A. Fagerberg.)

and Harry, is admissible in this action against the United States Marshal. I think it is wholly incompetent for the reason that it is a matter wholly between themselves.

Mr. DONOHUE.—Our contention is that this bill of sale was given for a debt due H. M. Fagerberg for wages. This is one of the links in the chain to show that there was wages due to him from J. A. Fagerberg at the time the bill of sale was executed.

By the COURT.—I remember the former witness was asked regarding a certain paper which he claimed he had lost or didn't know where [154—137] it was, something signed by J. A. Fagerberg—when was that paper executed?

Mr. DONOHUE.—In February, 1912.

By the COURT.—What was its general purport?

Mr. DONOHUE.—The purport was, adjusting the amount due H. M. Fagerberg for wages from J. A. Fagerberg and providing the times of payment—that is the testimony of H. M. Fagerberg in substance.

Mr. RITCHIE.—We regard that as incompetent.

* * *

By the COURT.—The objection will be overruled and exception allowed. The plaintiff is claiming that J. A. Fagerberg and the Carstens Packing Company were in partnership in this matter and he was employed by them; it is for the jury to determine whether that is true or not and this is one of the links of evidence going to show their relations. If the writing were here, it would be admissible and as the foundation is laid, showing its loss and that it cannot

(Testimony of J. A. Fagerberg.)

be produced, he may testify as to its contents.

Recess to 2 P. M.

AFTERNOON SESSION.

Continuation of the direct examination of J. A. Fagerberg.

(By Mr. DONOHOE.)

Q. Do you remember the general terms of the contract made between you and H. M. Fagerberg in February, 1912, drawn up by Mr. Brock? A. Yes.

Q. Just state the general terms of that contract as you remember it.

A. As near as I can remember, we settled on \$4,000. I was to pay two thousand in six months and the other the first of the year, 1913.

Q. Who is Mr. Brock?

A. Manager for S. Blum & Company.

Q. He was friendly to both you and H. M. Fagerberg at that time? [155—138] A. He was.

Q. You say \$2,000 of it was payable in six months?

A. Yes, sir.

Q. What wages was H. M. Fagerberg to have from February on, after this contract was signed?

A. I cut him down to \$100 per month.

Q. When this first six months was up, along in September or October, 1912, did H. M. Fagerberg make any demand upon you for any part of that back wages?

Mr. RITCHIE.—We object to that as incompetent and irrelevant.

Objection overruled; defendant allowed an exception.

(Testimony of J. A. Fagerberg.)

A. Yes, sir, he did.

Q. And was there any controversy over it at that time?

A. Yes, sir, we had considerable controversy at that time.

Q. Did you pay him his \$2,000? A. I did not.

Q. What arrangement did you and H. M. Fagerberg make at that time in regard to the payment that was then due of \$2,000 for back wages?

A. I made this arrangement—I told him I would go out and see what Tom Carstens would do about it, and the Carstens Packing Company, and I would take it up with them and if they wouldn't pay his back wages or do anything with it that I would send him a bill of sale for it.

Q. What month was that?

A. This was along in the fore part of October or November, when I was negotiating or trying to get a transfer of the liquor license from Chititu—the time I made the deal with Oscar Breedman.

Q. What do you mean by the deal with Oscar Breedman?

A. When I leased the house. [156—139]

Q. When you leased the Blackburn roadhouse and hotel? A. Yes, sir.

Q. Did you go to Seattle? A. Yes, sir, I did.

Q. About what time?

A. About the 24th of November I left Cordova, of the year 1912.

Q. And at the time of arriving at Seattle, did you have any conversation with the officers of the Cars-

(Testimony of J. A. Fagerberg.)

tens Packing Company in regard to the claim of H. M. Fagerberg for wages? A. Yes, sir.

Q. With whom did you have such conversation?

A. W. H. Prater.

Q. Who was he?

A. Secretary and treasurer for the Carstens Packing Company.

Q. Just state the conversation you had with W. H. Prater in regard to that matter.

A. I told Mr. Prater the trouble I had been having up here and he says, it is the same old story, we have always had that up there—referring back to the old Myers outfit—and I told him what I wanted to do.

Q. What did you tell him you wanted to do in regard to H. M. Fagerberg's account for back wages?

A. I told him I wanted him to take care of that and I would give the Carstens Packing Company—if he would take care of H. M. Fagerberg's account, H. M. Fagerberg's wages, and the rest of the liabilities, I would give the Carstens Packing Company a transfer of the property, all the property I had control of in Alaska.

Q. Is that the same property that appears in the bill of sale that you did give H. M. Fagerberg in July, 1913? A. Yes, sir. [157—140]

Q. What did Mr. Prater say in regard to that?

A. He said he wouldn't have anything to do with it, I could do just as I liked.

Q. Did you have any talk about that time with any other officer of the Carstens Packing Company?

(Testimony of J. A. Fagerberg.)

A. No, he wanted me to go over and see Tom Carstens about it.

Q. Where did Tom Carstens live?

A. His office is in Tacoma, the plant.

Q. Did you go and see Tom Carstens about it?

A. I did.

Q. Did you have any conversation with him?

A. I did.

Q. State the conversation you had with Tom Carstens?

A. I told Mr. Carstens the proposition as I told Mr. Prater; I told him, you take care of Harry's back wages and look out for the rest of the creditors and I will give you a transfer of the property and will call it quit.

Q. What did Mr. Carstens say about it?

A. He said, "No, I don't want anything to do with it; we will just take our loss and you can do as you like."

Q. What did you tell him you were going to do with the property then?

A. I told him when I went out that I would give Harry the property.

Q. When did you actually make a bill of sale to this property to H. M. Fagerberg?

A. The 15th of July, 1913.

Q. Where did you have that bill of sale made out?

A. Seattle.

Q. By whom?

A. George A. Custer. [158—141]

Q. Did you leave the bill of sale with Mr. Custer

(Testimony of J. A. Fagerberg.)

after you signed it? A. Yes, sir.

Q. Did you give him any instructions what to do with it or any letter to write with it?

A. I told him to send it to Harry and told him I wasn't going back to the country any more.

Q. That is the bill of sale that has been introduced in evidence here? A. Yes, sir.

Q. That was about the 15th of July, 1913?

A. Yes.

Q. Did you shortly after that have any other or further conversation with Tom Carstens, the President of the Carstens Packing Co.?

A. Yes, sir; I did.

Q. When?

A. I was away, out of the city, and they started to hunt me up and then they sent for me and I came back from Everett and Prater and myself and Custer went to Tacoma and we had a conversation then and they wanted me to go back to Alaska on account of the Shushana strike.

Q. Who did you have a conversation with when you went to Tacoma? A. Mr. Carstens.

Q. Was Mr. Prater present? A. Yes, sir.

Q. Did Mr. Carstens state to you at that time why he sent for you?

A. Yes, he stated, the Shushana strike is on now and it looks as if we would be able to do something with that and I want you to go up there and get the property back from Harry and see if you can do something with it and get our money back out of it.

Q. Did he state why he thought there was a chance

(Testimony of J. A. Fagerberg.)

to get the money? [159—142]

A. Because of the Shushana stampede—he was very much excited about it at that time.

Q. When did the news reach Seattle about the Shushana strike?

A. Along about the 20th of July, I judge, 1913.

Q. Just describe to the jury the location of the Shushana mining district, with reference to the Blackburn roadhouse—what advantages there are to the roadhouse.

A. The Blackburn roadhouse is situated at the end of the Copper River & Northwestern Railroad—it is a distributing point for the head of the White, Chitina, Nizina, and all the tributary country and has the control of that section of the country; it is the natural gateway, the same as Valdez is to the Copper River country—and that was my argument with the company in putting in the Blackburn place.

Q. Then, as I understand you, people going to the Shushana, get off the Copper River Railroad at Blackburn or McCarthy? A. Yes, sir.

Q. And it is a case of mushing from there into the Shushana? A. Yes, sir.

Q. Now, what kind of a proposition, if any, did Mr. Thomas Carstens make to you in that conversation early in August, 1913, in which he wanted you to come back up here and get Harry Fagerberg to transfer the property back to you or to him?

A. “Well,” he says, “You go up there and get the property back and I will give you anything you want.” He even went so far as to pay my transpor-

(Testimony of J. A. Fagerberg.)

tation—"and I will take care of all your back alimony," etc., if I would go and straighten it out; he says, "You are the only one can straighten it out."

Q. Was anything said in that conversation about H. M. Fagerberg's back wages, or what interest he should have? [160—143]

A. Well, there was nothing definite said at that very time except, do the best you can—he always did—and I demanded a letter from him giving me instructions what to do.

Q. Did you about that time receive a letter from Thomas Carstens? A. I did.

Q. I hand you a letter, dated Tacoma, Washington, August 15, 1913, addressed to J. A. Fagerberg, Tacoma, Washington, and signed Thomas Carstens and ask you if that is the letter you received from Mr. Thomas Carstens about that time. (Handing witness letter.) A. Yes, sir; it is.

Mr. DONOHOE.—We offer this letter in evidence and ask that it be marked Plaintiff's Exhibit "E."

The letter is admitted in evidence, without objection, marked Plaintiff's Exhibit "E" and read to the Jury by Mr. Dimond, as follows:

**Plaintiff's Exhibit "E" [Letter, August 15, 1913,
Carstens to Fagerberg].**

Tacoma, Wash., August 15, 1913.

J. A. Fagerberg,
Tacoma, Wash.

Dear Sir:

In case you succeed in getting your brother to turn the property over to me you can wire me to that

(Testimony of J. A. Fagerberg.)

effect so I can get my man ready and proceed at once providing you wire to send the man. In case the chances to make money out of the horses and barn is favorable I think best for you to stay up there and keep it agoing until this man arrives. In case you find things unfavorable and no chance to make money out of the horses and barn best come down and not wire us to send a man up until you get down here. In case your brother does not wish to turn the whole, or two-thirds, over to me our Mr. Wilt and Mr. Custer will advise you on how to proceed.

Would advise you to look after this mining claim, Copper Creek and *Tllurin* Mining property. By all means see that the horses and barn are earning money to pay all expenses and when you come back let me know if it can be put in shape whereby the horses and barn can earn money. In case they are not doing well and the chances of earning money are not favorable would advise to dispose of the horses to best advantage and when you come back, then will be the best time to talk things over carefully and decide how to proceed right.

Respectfully yours,

THOS. CARSTENS. [161—144]

Q. Did you come to Alaska shortly after receiving that letter or not? A. I did not.

Q. Why didn't you come to Alaska at that time?

A. I was taking the advice of my attorney and he said I was foolish coming back and I didn't come.

Q. Why were you foolish?

A. On account of the divorce proceedings pending

(Testimony of J. A. Fagerberg.)

against me down there by my wife.

Q. The divorce proceedings were pending against you by your wife in Seattle? A. Yes, sir.

Q. Did you later have another conversation with Mr. Thomas Carstens representing the Carstens Packing Company along the same lines?

A. Along the same lines—I had several of them.

Q. When did that conversation take place?

A. Along in December and along in January—just before I came up.

Q. December, 1913, and January, 1914?

A. December, 1913, and January 1914.

Q. What kind of a proposition did he make to you at that time in behalf of the Carstens Packing Company?

A. Well, he said, you go down there and do the best you can, and make whatever arrangement you can with your brother.

Q. For what purpose were you to make arrangements with your brother?

A. To take care of him for his back wages and take the proposition back from Harry.

Q. That is the Blackburn roadhouse?

A. The Blackburn roadhouse and the horses and the barn and the Chititu store.

Q. The property for which you had previously given a bill of sale [162—145] to him?

A. Yes, sir.

Q. Did you come to Alaska then, shortly after that? A. I did.

Q. When did you come to Alaska?

(Testimony of J. A. Fagerberg.)

A. I left Seattle some time in January—the latter part of February, 1914.

Q. How long had you been out of Alaska previous to that?

A. I left November 20th—I left McCarthy, Alaska, November 20, 1912.

Q. And didn't return until—

A. February, 1914.

Q. Then you were away from there a period of about sixteen months? A. Yes, sir.

Q. When you arrived at McCarthy or Blackburn in February, 1914, who was in charge and who was handling and owning the property named in the bill of sale that you had previously given to H. M. Fagerberg? A. Harry was in charge of it.

Q. Did you have any negotiations with him after you arrived there? A. I did.

Q. And did you make any kind of a deal with him?

A. I made a deal with him, yes, sir.

Q. I hand you Plaintiff's Exhibit "D" and ask you if that embodies the terms of the deal you made with Harry Fagerberg regarding the property at that time? A. It does.

Q. Do you know who drew that up?

A. Yes, sir.

Q. Who? A. Mr. Frank Foster.

Q. Who is Frank Foster? [163—146]

A. An attorney who was at Chitina at that time and afterwards moved to McCarthy.

Q. You took this property, then, under that lease, did you—took possession of it?

(Testimony of J. A. Fagerberg.)

A. Yes, until the consummation of the other proposition with it.

Q. Until the consummation of the incorporation as provided in that agreement? A. Yes, sir.

Q. That corporation was never consummated?

A. That corporation was never consummated.

Q. Why wasn't it consummated?

A. Why, because Tom Carstens and I got into an argument over the control of the property.

Q. Was there anything done by H. M. Fagerberg that interfered with your going through with the contract as agreed to? A. Nothing whatever.

Q. It was just a disagreement between you and Thomas Carstens? A. I and Thomas Carstens.

Q. How long did you have possession of that property under that lease, up to what time?

A. From the fourth of March up to the time of the attachment.

Q. What attachment was that?

A. The attachment the Carstens Company had taken out against me for goods, wares and merchandise for a judgment they had in Seattle.

Q. I hand you a complaint, Carstens Packing Company, a corporation, versus J. A. Fagerberg and ask you if that was served upon you along in August or the latter part of July—if that is the copy that was served upon you? (Handing witness paper.)

A. Yes, sir. [164—147]

Q. That is the complaint upon which the writ of attachment was issued that you speak of?

A. Yes, sir.

(Testimony of J. A. Fagerberg.)

Mr. DONOHUE.—We offer this complaint in evidence and ask that it be marked Plaintiff's Exhibit "F."

The complaint is received in evidence, without objection, marked Plaintiff's Exhibit "F."

Mr. DONOHUE.—I will not read this complaint to you in full. This is a complaint in the case of Carstens Packing Company versus J. A. Fagerberg and is the complaint and suit in which the writ of attachment was issued and levied against the property which we claim belonged to H. M. Fagerberg.

Q. In this cause of action there is a claim of \$2,651.72 being the amount of a judgment obtained against you in King County, State of Washington, by the Carstens Packing Company—state the items that go to make up that judgment.

A. \$700 of that is cash I got according to my own agreement, that at any time I was stuck or needed any help, that I was to get it; that I put into the Seattle home.

Q. Whose home was that?

A. My own personal home, that my former wife had.

Q. Did H. M. Fagerberg have anything to do with that matter at all? A. Nothing whatever.

Q. What was the next item?

A. The next item was, I got meat from them and taken out of my Alaska money, mail money and one thing and another I had at the roadhouse and put into my home down there, and I got meat and put it back into the country in various sections.

(Testimony of J. A. Fagerberg.)

Q. What was the original amount of this judgment against you, as near as you can remember? [165—148] A. About \$2,300.

Q. \$700 of that was money you borrowed direct from the Carstens Packing Company and put into your home in Seattle? A. Yes, sir.

Q. Then it left about \$1,600 which you say you invested in Seattle—did you before investing this \$1,600 in Seattle, take the matter up with the Carstens Packing Company?

A. I did, with Mr. Prater and the Carstens Packing Company.

Q. What did they say in regard to that?

A. They said all right.

Q. Then you invested that money down there with their consent?

A. Their consent and their full knowledge—they knew where I was using it—they knew where I used every dollar. Every time I did anything I always consulted Mr. Prater.

Q. Did H. M. Fagerberg have anything to do with that property in which the \$1,600 was invested or the money?

A. Never had a thing to do with it.

Q. Now, in regard to this four thousand and odd dollars for goods, wares and merchandise and money advanced—that according to this complaint was between the tenth day of March, 1914, and the 12th day of June, 1914. Under what circumstances was that money and goods advanced to you?

A. Well, I wrote and told him the proposition I

(Testimony of J. A. Fagerberg.)

had made and wrote and told him what I wanted and I showed him the draft; I told Harry, I am going to draw a draft on Tom to show you that he is behind me.

Q. Who do you mean by Tom?

A. Mr. Carstens, the president of the Carstens Packing Co. And I turned to and drew a draft for the sum of \$1,500, fifteen hundred and some odd dollars, and the draft was accepted and paid. Also ordered merchandise from him and restocked the [166—149] roadhouse, when I was taking charge of that, and I got that and various other things, meats and one thing and another.

Q. Now, at the time the Carstens Packing Company made this advance to you in the spring of 1914 of goods, wares and merchandise and money, did they have previous, positive knowledge that you had formally transferred the title to the property in question in this suit to H. M. Fagerberg?

A. Yes, sir.

Q. How did they know that?

A. I just simply told them.

Q. When?

A. I told them in July, 1913, that I transferred the property to Harry.

Q. Did you write either Mr. Carstens or the Carstens Packing Co. and tell them the terms on which you took this property back from Harry Fagerberg, in March, 1914.

A. Yes, I wrote to them and told them the terms on which I was taking it.

(Testimony of J. A. Fagerberg.)

Q. Did the terms you set out to them correspond with the terms in Plaintiff's Exhibit "D"?

A. I think they did. The corporation part was explained to them explicitly. On the leasing part, I didn't pay any attention to that part of it, for the simple reason I never thought that would go into effect. I expected after they paid the \$1,500 draft and came through with the merchandise, that they would go through with the incorporation part, which would save them and me also.

Q. During the spring of 1914 you also got other merchandise that you had at McCarthy and Blackburn? [167—150] A. Yes, sir.

Q. What other merchandise did you get up there?

A. I got the oats.

Q. How much oats? A. Forty tons of oats.

Q. Where did you get them or from whom?

A. From Jennings Brothers, LaConner, in Skagit County, State of Washington.

Q. What else did you get?

A. I got merchandise from Schwabacher Brothers and a ton of coffee from the Schilling Company.

Q. What was the cost of the oats at LaConner?

A. The cost of the oats at LaConner was \$25 a ton.

Q. That would be a thousand dollars?

A. That would be a thousand dollars.

Q. You say you got a ton of coffee from Schilling?

A. Yes, sir.

Q. What was the cost of the ton of coffee landed at Blackburn or McCarthy—how much was it a pound?

(Testimony of J. A. Fagerberg.)

A. It cost 32¢ in San Francisco and the freight bill on it was \$125 and the freighting of it into the Shushana.

Q. That would be with the freight landed at McCarthy—\$765? A. Yes, sir.

Q. Where was this coffee at the time the attachment was levied on your property?

A. At Shushana, Alaska.

Q. What did it cost to get it from McCarthy to Shushana?

A. The lowest cost of freighting in there would be about ten cents, the actual cost, without any profit added.

Q. That would be about \$200 more?

A. Yes, sir, that would be about \$200 more.

[168—151]

Q. That would make the coffee cost you \$965 landed at Shushana?

A. I figured it a thousand dollars.

Q. Was that coffee taken in custody by the marshal under the writ of attachment issued against you by this complaint? A. Yes, sir.

Q. Did Harry Fagerberg at any time make any claim to any part of that coffee? A. Yes, sir.

Q. That was attached as your property?

A. Yes, sir.

Q. Where were the oats when this attachment was levied?

A. The better part of the oats were at Charley Davis', about twelve or sixteen miles from Blackburn, at the mouth of the Chitistone.

(Testimony of J. A. Fagerberg.)

Q. Did they attach those oats? A. Yes, sir.

Q. What was the value of the oats that the Carstens Packing Co. attached?

A. The value of the oats at the time the Carstens Packing Co. attached them was ten cents—I had them sold for ten cents.

Q. About how many pounds of oats were there?

A. About eighty sacks—about four tons.

Q. That would be about— A. About \$800.

Q. Now, what other property did you have there that was attached that belonged to you?

A. There was the stock in the store.

Q. Where was the store?

A. At Blackburn, Alaska, alongside the roadhouse or hotel.

Q. What was the value of the goods in that store?
[169—152]

A. In the neighborhood of \$4,000.

Q. That would be altogether about \$5,800?

A. Yes, sir.

Q. Now, did H. M. Fagerberg make any claim to any of that property? A. No, sir.

Q. There is none of that property included in this suit, now before the Court and jury? A. No, sir.

Q. And that is all property that you brought into the country in the the spring of 1914? A. Yes, sir.

Q. And that includes practically all the property with the goods, wares and merchandise that the Carstens Packing Co. sent to you in the spring of 1914.

A. Yes, sir.

Q. Now, the Carstens Packing Co. then attached

(Testimony of J. A. Fagerberg.)

property of your own, to which there was no dispute as to your ownership, to the amount of about \$6,000?

A. Yes, sir.

Q. And that attachment was made previous to taking any of this property from your brother which is now in question in this controversy?

A. Yes, sir.

Q. When was that attachment made on your property if you can recall?

A. As near as I can remember, about the second of August.

Q. What did you do in regard to the property that you had leased from your brother as shown by Plaintiff's Exhibit "E"?

A. I just took and turned it over to him. I said, "Harry, go to it, I am through with it." I turned it back to him. I said, "They can go to the devil"; I said, "I won't fool any longer with it." [170—153]

Q. And did he take possession of that property?

A. Yes, sir.

Q. On the second of August, 1914?

A. Yes, sir, on the evening of the second of August he took possession of it.

Q. Do you know when his property was attached by the marshal?

A. Along about the 6th or 7th, I just came from the Nizina—I don't remember exactly the date.

Q. Did you turn him back the possession of his property on the second of August?

A. Yes, sir, the evening of the second of August.

(Testimony of J. A. Fagerberg.)

Mr. DONOHOE.—That will be all.

Cross-examination by Mr. RITCHIE.

Q. As I understand it, Harry Fagerberg was in Seattle when you made this first deal with Mr. W. H. Prater to take the Nizini store? A. Yes, sir.

Q. At that time he had never been in Alaska?

A. Yes, sir.

Q. Had he been up in the Nizina country?

A. No, sir.

Q. The occasion of his going to Alaska was to take this place in the store at that time? A. Yes, sir.

Q. He had no connection with your cattle deals?

A. No, sir, absolutely none.

Q. He was on the boat, went up on the same boat you did? A. Yes, sir.

Q. And did you take him around and talk to Mr. Prater about this deal? [171—154]

A. No, sir, I did not.

Q. You made the arrangement, I believe you said, entirely with Mr. Prater?

A. Yes, sir, at that time I did.

Q. You didn't see Mr. Carstens about it?

A. I refused to have anything to do with Mr. Carstens—it was Mr. Prater's proposition.

Q. At that time you were personally acquainted with Mr. Carstens? A. Yes, sir.

Q. You had known him for several years?

A. Yes, sir.

Q. But the deal was entirely with Mr. Prater?

A. Yes, it was only on personal friendship that I went into the proposition at all. I had been friendly

(Testimony of J. A. Fagerberg.)

with Mr. Prater for some years and had more confidence in him; Prater had been a partner of mine the year before and we never had any dispute or trouble, and naturally under the conditions and the trouble Myers had had; I simply had to keep away from him.

Q. Did Mr. Prater know that Harry Fagerberg was going up to take charge of the store?

A. Yes, he knew that absolutely—I told him that flat-footed. I refused to go in. I said there wasn't enough money in it for me.

Q. Did you take Harry around and introduce him to Mr. Prater? A. No.

Q. You didn't think it important that he should meet Mr. Prater and get instructions from him?

A. Prater gave me instructions, turned it over absolutely to me—gave me a bill of sale and I was to do absolutely as I pleased with it; he had that confidence in me—I could put in anyone I wanted to and I told him I would put in Harry. [172—155]

Q. You stated you had cattle and did not go to the store that fall with Harry? A. No, sir.

Q. When did you first visit the Chititu store after you took charge over there?

A. January, 1908.

Q. Did you remain there some time?

A. I was there over one day, enough to rest up.

Q. Did you spend any time during the year 1908 there?

A. I don't think I did; I came back; I got about \$800 worth of stuff and took it back in there, restocked the store, and I might have been there a day

(Testimony of J. A. Fagerberg.)

or two then; I was there for about a couple of days when I took the Victor Olsen stuff and brought it back to the mouth of the Nizina and then came on out.

Q. Olsen had a wood contract with the Katalla Company?

A. Yes, sir, Olsen had a wood contract with the Katalla Company.

Q. What property did you own at the time you made this deal with the Carstens people in 1907?

A. I had in the neighborhood of two or three thousand dollars outstanding accounts along the road-houses here; I owned property in Seattle, pretty near every other addition in Seattle; I owned property at Fourth and Boston, Mount Baker Park, Kuen's Addition, University Addition and I think the Scenic Addition in the City of Seattle.

Q. You have since disposed of most of that?

A. Yes, in various ways.

Q. You didn't spend much time in the road-house in 1908?

A. At the Chititu store, I was there very little.

Q. How much time did you spend there in 1909?

A. It was practically the same thing in 1909; I was there in the [173—156] spring, helped in the outfit for a while and I was there that summer and in 1909 there was a deal—in 1909 I began to figure on the place over at Blackburn; I was figuring on it and I had taken in four head of cattle and I was figuring on the transfer of the liquor from the Nizina to McCarthy or Blackburn.

(Testimony of J. A. Fagerberg.)

Q. You didn't spend much time at the Chititu store in the year 1909? A. No.

Q. Were you there much in 1910?

A. Not a great deal, no.

Q. Your work was usually on the trail, either freighting or driving cattle?

A. My work was taking in the supplies in the spring and driving the cattle, yes, sir.

Q. You heard Harry testify he turned most of the money over to you? A. Yes, sir.

Q. Would he do that from time to time or once a year or twice a year? A. It was from time to time.

Q. Did he transfer it to you by mail or turn it over to you when you went in there?

A. Transferred most of it by mail.

Q. Sent it to Seattle?

A. No, most of it came direct to the bank here in Valdez.

Q. You had an account in the Valdez bank?

A. Yes, sir.

Q. This money that you received from him—I believe he stated here that he took in something over \$9,000 in three years. Now, how much of that did you receive, if you remember?

A. I don't just remember.

Q. And what did you use that money for? [174—157]

A. Buying supplies to put back in there from year to year, to restock again, most of it.

Q. Didn't you use any of it for your own business?

A. Naturally would use some of it. I very seldom

(Testimony of J. A. Fagerberg.)

got enough money to pay me for the new stock I put in and I would naturally make the switch.

Q. As a matter of fact, didn't you have all your business more or less mingled together, so you kept no separate accounts—you did what a great many men do who have various interests, you used money as you got it for whatever you most needed it for?

A. Yes, what I most needed it for, on the store or cattle; that was my agreement with them.

Q. You never had an idea how you did stand with the Carstens after the first year you did business with them?

A. No, not after the first year. I thought it would be a whack up on the cattle, anyhow, and they would have their interest in it.

Q. In 1912 was the first time that you and Harry came to an issue over the fact that he was shy on his wages? I believe you and he both said that you had friction over his back wages?

A. The first friction we had over the back wages was in November, 1910. That was the first trouble we ever had.

Q. That was when you were getting out the logs for the roadhouse?

A. That was when I started in there.

Q. When did you talk to Harry about getting out the logs for the roadhouse?

A. That was along in the spring or summer of 1910.

Q. That was the year the Copper River & Northwestern Railroad went through?

(Testimony of J. A. Fagerberg.)

A. They were supposed to be up there the next spring—they hadn't got there yet. [175—158]

Q. The Copper River & Northwestern Railway got past Chitina in the summer of 1910?

A. They got up to Chitina in the fall of 1910.

Q. In September? A. Yes.

Q. And had been grading beyond that and the track went through to Kennecott by the middle of winter.

A. Yes, sir, the track was in Kennecott some time in April, 1911.

Q. And it was in the summer of 1910 when it was known the railroad would be completed some time the next year that you began to figure on Blackburn as a likely place?

A. I figured on that in 1909, when I got in trouble with Birch over the liquors.

Q. As soon as it was known the railroad was going through? A. Yes, sir.

Q. In the fall of 1910 Harry quit the Chititu store, about August or September, I believe, somewhere along there?

A. I don't know just when; I wasn't there.

Q. He has testified to that; and shortly after that he went to getting out these logs to build the Blackburn roadhouse; where did you get out the logs?

A. On McCarthy Creek.

Q. Where is that?

A. At McCarthy, close to McCarthy, comes right past McCarthy.

Q. Who worked with him on that?

(Testimony of J. A. Fagerberg.)

A. You will have to ask him about that, I don't know.

Q. You don't know who worked with him?

A. No.

Q. What was the arrangement under which Harry went down there?

A. He went under the same arrangement he had in Chititu; I was trying to get my money out of the boy. [176—159]

Q. He was working for you for the same old salary? A. Yes, sir.

Q. Who paid the men that worked with him?

A. I guess he did; he had the authority to do that.

Q. He had authority to employ men as he chose?

A. Yes, I told him to go ahead and get out the logs, fell the logs and get them out and pay the men; he had absolute charge of that when I told him to go ahead and do that.

Q. Did you have any talk to him about this \$8,300 that he had in his possession or under his control?

A. Yes, in the fall of 1910.

Q. Was that before he started in on the logging?

A. He had already started; he had the logs practically out and he had the barn up.

Q. And who was paying the wages of the men at that time?

A. I paid them afterwards, after I came in.

Q. At that time they hadn't been paid?

A. At that time they hadn't been paid; he got the supplies from Blum to supply the men, their clothing.

(Testimony of J. A. Fagerberg.)

Q. State your version of the conversation between yourself and Harry over this \$3,800?

A. We got into an argument over it and what started it, somebody issued a check on the Valdez bank, issued a forged check on Harry, and Mr. Lang said to me, "Harry has overdrawn his account," and I said, "I don't see any reason for it," but I said "All right, charge it up to me, to my account," and when I went in there—I had been working hard all summer and had been out on the trail and around and I was cold and cranky, and I jumped on him rough-shod for overdrawing his account, and one thing led to another and I asked him what he had done with the money. "Was [177—160] it necessary to overdraw your account and I have to make it good for you," and he said, "I have \$3,800 for my salary," and an argument came up about the place at Kennecott; "Well," he says, "I am holding that out for my salary and I intend to hold it, too," and the argument went on until we landed into a scrap; I was stronger; I didn't want to abuse the boy and I held him until he cooled down a little bit and told him where he was at and talked him out of it.

Q. Where was the \$3,800 at this time?

A. He had the money in the Scandinavian-American Bank, I think, outside.

Q. He turned that over to you?

A. Yes, he gave me a check for it on the Scandinavian-American Bank.

Q. So you are sure it was in the Scandinavian-

(Testimony of J. A. Fagerberg.)

American? A. Yes, sir.

Q. Did you concede at that time that the \$3800 was due him?

A. Yes, sir, I conceded that the \$3800 was due him, I concluded the \$3800 was due the boy and I think a little more.

Q. How did you persuade him to give it up to you?

A. I said to him, "I put you in here and I am up against it on the proposition," but I told him the advantages of the thing and the points of the argument, and I said, "The property is worth it; any time I fall down you have the house here, when I put in the house—you can't lose any way, even if the Carstens Packing Co. gives you the dirty end of it."

Q. You literally talked him out of it?

A. I literally talked him out of it.

Q. By smooth talk?

A. You bet you, I admit that.

Q. What inducement did you offer him to give up that \$3,800—anything but the desire to help you?
[178—161]

A. No, nothing else but the brotherly feeling there was in that respect. I never offered him any inducements; I told him the prospects of the country and the advantages of the country.

Q. He wasn't to be in on the rake-off?

A. No, sir.

Q. Absolutely had no interest in the Blackburn place? A. No, he had no interest whatever.

Q. Not even an optional interest?

(Testimony of J. A. Fagerberg.)

A. Not even an optional interest; no, he was simply there on a salary and that was the cause of the fight, and the fight between myself and wife was over that old stock and I was standing up for the Carstens Packing Company.

Q. At that time, in the fall of 1910, he was working for you for \$125 and he loaned you this \$3,800 without interest, simply to help you out?

A. That was my understanding with Harry when I put him in there. I thought \$1,500 was good wages and he could let it stay in the business.

Q. Did you still owe him the money in 1912?

A. Yes, sir.

Q. And was that evidenced by a note or anything?

A. He had this contract that Mr. Brock drew up for him.

Q. He never had anything in writing until Mr. Brock drew that up in the spring of 1912?

A. No, sir.

Q. Was it a part of the consideration in the agreement that his wages were cut to \$100 per month?

A. I don't know.

Q. He let you have this \$3,800 indefinitely, without any interest or without anything in writing, until the memorandum agreement [179—162] was drawn up by Mr. Brook in the spring of 1912?

A. Yes, sir.

Q. And he continued under the old arrangement, except that his salary was cut to \$100, until the summer of 1913? A. Yes, sir.

Q. You were down in Seattle for a good many

(Testimony of J. A. Fagerberg.)

months, from November, 1912, until February, 1914—you were there about fifteen months? A. Yes, sir.

Q. You were in Seattle and along the sound all that time?

A. No, I was in California. I left in February; I was in Vancouver and Victoria in February, 1913, and I went direct from Victoria to San Francisco and from San Francisco to Los Angeles and back to Bakersfield.

Q. Were you engaged in business?

A. I was working there.

Q. Different employments?

A. Different employments: I was rustling—most of the time I was trying to get some money for the Krumm property, the Tellurium Mines Company.

Q. You spent about \$6,000 altogether on the Krumm property? A. Yes, sir.

Q. Where did you get that \$6,000?

A. It naturally came out of the business up there, the Blackburn and Chititu stores,—I had instructions to do that and could do it.

Q. There was a good deal of grub furnished for the work on the Krumm property from the Chititu store?

A. Yes, from both places, and also the Seattle Gulch property.

Q. Have the Carstens ever got anything out of the Krumm property?

A. No, sir.

Q. Or have they any of the stock of the Tellurium Mines Co.?

(Testimony of J. A. Fagerberg.)

A. No, but he was offered an opportunity to take hold of it; he [180—163] was offered an opportunity to protect his interest there and he wouldn't do it and wouldn't keep up his assessment work there.

Q. Was he ever offered anything for his share of the stock of goods that went in there?

A. That would naturally go along with the business.

Q. When did you get back to Seattle after your trip to California in the early part of 1913?

A. I got back some time about the 20th of June, if I remember right; I was in Seattle over night and then left and went out on the Tacoma-Eastern and was not back until after the 4th of July, 1913. I think I got home, over at the home place, about the 5th of July, somewhere.

Q. Was the litigation between yourself and wife pending at that time?

A. I think it was, but I had never received the papers.

Q. You made some reference to back alimony—wasn't that as a matter of fact on the decree for maintenance, made up here? A. Yes, sir.

Q. Your wife sued you first for separate maintenance and Judge Cushman made an order directing you to pay her something for maintenance?

A. Yes, sir.

Q. That was in 1912? A. That was in 1912.

Q. And some time in 1913, or possibly later, your wife sued you in the Superior Court of King County,

(Testimony of J. A. Fagerberg.)

Washington, for a divorce? A. Yes, sir.

Q. And this back alimony was the separate maintenance decreed in Alaska? A. Yes, sir. [181—164]

Q. When you went out in the fall of 1912 did you immediately see Mr. Thomas Carstens and Mr. W. H. Prater?

A. I saw them about a week after I got there.

Q. Did you talk over the business up here?

A. Yes, sir, I told them the whole thing from A. to Z, the scrap I had, the efforts to get the liquor license and the deal with Breedman and everything was thrashed over.

Q. During the years that Harry was running the Chititu store up there and turning the money over to you, did you make any allowance to the Carstens Packing Co. or to Mr. Prater?

A. I told them when I was down there what I was doing.

Q. Did you ever make any report or any statement showing the exact financial transactions at Chititu?

A. No, no reports—it was only word of mouth between I and Prater.

Q. You simply dropped in from time to time and talked things over? A. Yes, sir.

Q. Mr. Carstens had his office in Tacoma?

A. Yes, sir.

Q. At the packing-house?

A. At the packing-house.

Q. And Mr. Prater's office is on First Avenue, South, in Seattle—the Seattle end of the Carstens

(Testimony of J. A. Fagerberg.)

Packing Company? A. Yes, sir.

Q. And you saw them both from time to time, turn about?

A. Turn about—I would go over to Tacoma and see Tom.

Q. Did you ever go over to Tacoma with Mr. Prater to see Mr. Carstens?

A. Only once and that was after the transfer of the property.

Q. That was in 1913? A. That was in 1913.

[182—165]

Q. Did you make any report at the time the store was closed up by Harry in 1910—were you around in Seattle shortly after that?

A. I never was in Seattle until some time in January, 1911, and I was there possibly for two weeks, that was in February; I think I got in Seattle somewhere along the latter part of January and I left the 8th of February again to come back up and during that time I wouldn't be positive whether I seen Mr. Carstens or not, but I seen Mr. Prater because my wife had borrowed personally some \$250 from Mr. Prater which I paid back.

Q. That was personal? A. That was personal.

Q. At that time did you have a general conversation with Mr. Carstens or Mr. Prater or anything like a settlement of accounts? A. No.

Q. Or any understanding as to how the business was to be continued in the future?

A. No, none whatever; I told them I didn't think it was fair to myself or the Carstens Packing Com-

(Testimony of J. A. Fagerberg.)

pany to carry on the thing the way it was—it was unsatisfactory to me.

Q. So the matter remained in sort of a comatose state until you came back in the spring of 1913?

A. The summer of 1913.

Q. You got back in June?

A. Yes, the latter part of June?

Q. When did you first see Mr. *Mr.* Carstens or Mr. Prater in the summer of 1913?

A. It was right after the fourth of July; I had been home a day and I went down to Mr. Prater and said, “How about that old mess [183—166] out there” and I said, “I am going to turn it over to Harry, if you don’t take it,” and he said, “I won’t have anything to do with it, go ahead,” and I says, “All right,” I says, “The deal is off now all right; your old Nizina stock is gone and what money I have put in we have lost”; he said, “All right, I won’t have anything to do with it,” and I went to Mr. Custer and said, “George, make out a bill of sale for that stuff up there,” and I gave him the items and that evening I left.

Q. Did the Carstens Packing Co. from time to time ship goods to you to be used at the Chititu store?

A. I don’t believe the Carstens ever shipped a dollar’s worth to be used there.

Q. Did you get goods from other merchants to be used there? A. Yes, I did.

Q. I mean did the Carstens ever send you goods they obtained from other business houses?

A. No, except this last spring, 1914.

(Testimony of J. A. Fagerberg.)

Q. The stock was always replenished by yourself—the purchases were made by you? A. Yes, sir.

Q. After this first conversation with Mr. Prater and he told you he didn't want anything more to do with it, did you then go to see Mr. Carstens?

A. No, sir, I did not; I left that night.

Q. Where did you go? A. I went to LaConner.

Q. You stayed at LaConner a considerable length of time?

A. I was there until the first of September, I judge, and then went to Butte, Montana.

Q. When you returned to Seattle a little later in 1913—what was the occasion of your going to Seattle? [184—167]

A. Mr. Wilt was hunting for me; the Shushana strike was on.

Q. C. F. Wilt, the attorney for the Carstens Packing Co.? A. Yes, sir.

Q. Did he find you there? A. No, sir.

Q. How did you happen to get back? They got into communication with you and you returned to Seattle and saw them?

A. I got into communication with them and I told them, "I will be in Everett to-morrow morning; come over to-morrow morning and I will meet you at the Mitchell Hotel," and I phoned my brother George, I was looking out so they wouldn't trap me on to any deal and I always had a witness from that time on.

Q. Isn't it true that from that time on you were a

(Testimony of J. A. Fagerberg.)

little afraid they might grab you on this old Alaska judgment? A. No, sir.

Q. Weren't Mrs. Fagerberg's attorneys pounding you at that time?

A. No, sir, I was going around just the same as you are right now; I was in Seattle so Mr. Humphreys could get hold of me.

Q. That was *Mr.* Fagerberg's attorney?

A. No, he was the judge of the Superior Court there.

Q. You weren't keeping out of the way then, on that account?

A. No, I was going through Seattle and all around there.

Q. Why did you meet Mr. Prater at Everett?

A. I was going up the Snohomish River at that time. It was Custer and Prater I met. They said, "Go on, go and see Tom." I said, "There isn't much use for me to see Tom; you fellows can settle that." They said, "He wants you to go back up there." At that time I didn't have much faith in the Shushana stampede, but Mr. Prater says, "You know how Tom is, he is all worked up over it; go over and see him anyway," and I says, "All right," and we went [185—168] over there and had a talk with him.

Q. You did go to Tacoma and see Mr. Carstens?

A. I did go to Tacoma and see Mr. Carstens.

Q. Did you talk with anybody besides Mr. Carstens at that time?

A. I don't think I did. Mr. Carstens, Prater and Custer were there in the office.

(Testimony of J. A. Fagerberg.)

Q. Did you talk to Mr. Carstens and Wilt in Tacoma? A. Not at that time, no.

Q. When did you talk to them?

A. The following day, in Tacoma.

Q. About what time was that?

A. That was along the fore part of August, as near as I can remember.

Q. That was some time after you had given the bill of sale to Harry?

A. Yes, it was three or four weeks after the bill of sale was executed.

Q. The bill of sale was executed to him in July.

A. Yes, sir.

Q. At that time you hadn't seen Mr. Carstens and consulted him about it at all?

A. No, I didn't consider—when it came down to the Chititu stock, I refused to have anything to do with Myers and Carstens on it—I was dealing with the Carstens Packing Co. through Mr. Prater.

Q. You say that Mr. Carstens and Mr. Prater, or at least Mr. Carstens, was very anxious for you to go into the Shushana and wanted to outfit you

A. They wanted me to go up and get this property back from Harry. They thought there was a chance of getting this old hardware, getting that out—this stampede is on and maybe you can sell it and pay Harry up and maybe there will be something left for us [186—169] and there might be a boom on so you can do something with the horses.

Q. When did you first tell Thomas Carstens that you had given this bill of sale to Harry?

(Testimony of J. A. Fagerberg.)

A. He was aware of that before.

Q. Are you sure of that?

A. Yes, Prater told me he told Mr. Carstens.

Q. Was he satisfied that everything was turned over to Harry?

A. He must have been, he never made a howl.

Q. Did he consider that he still had an interest?

A. No, I don't think so, not to my knowledge he didn't.

Q. Here is the letter you received from Mr. Cars-
tens—"In case you succeed in getting your brother
to turn the property over to me, you can wire me to
that effect"—He wanted to get the property deeded
back to him, or an interest in it?

A. Yes, he wanted the property back.

Q. Further—"In case your brother does not wish
to turn the whole or two-thirds over to me our Mr.
Wilt and Mr. Custer will advise you on how to pro-
ceed"—On what basis did he want the two-thirds
turned back?

A. After the Shushana stampede started up I sup-
pose he naturally thought—I couldn't testify what
he had in mind.

Q. Didn't he claim he had an interest in it?

A. I don't know what he was claiming.

Q. He never told you he claimed to have an inter-
est in it?

A. No, sir, he never told me he claimed to have an
interest in it.

Q. Did he express any dissatisfaction that you had
transferred it to Harry?

(Testimony of J. A. Fagerberg.)

A. No, he said something about why didn't you come to me. I said, I never dealt with you, I always dealt with Bill and he was kicking [187—170] at Prater because he didn't accept the bill of sale and go through with it; this was after the stampede.

Q. You say he was very anxious to have you join the stampede and represent them?

A. Yes, they wanted me to straighten this thing out. They offered me transportation, they said they would furnish anything, and they would pay the back alimony, etc.

Q. Who offered that? A. Mr. Carstens.

Q. Did Mr. Wilt make any such offer?

A. I couldn't say, I wasn't dealing with Mr. Wilt.

Q. Was Mr. Wilt present at the time

A. I don't know.

Q. To refresh your recollection—I have here Mr. Hamburger's transcript of your testimony before the referee in bankruptcy at your examination as an alleged bankrupt last fall and I would like to ask you if Mr. Hamburger has got this correctly transcribed: Question by myself. "In these conversations with Mr. Prater you never told him or told C. F. Wilt that you wanted to get this out of your name so your wife couldn't get it"? And your answer. "I never talked to Wilt about it. That wasn't the intention—it was for the purpose of protecting Harry; if they wouldn't come through and protect their own interest and protect Harry, it belongs to him; that was the sole object." That is a correct statement of your evidence?

(Testimony of J. A. Fagerberg.)

A. That is a correct statement of my evidence, yes, sir.

Q. Now, there was some conversation between you and Mr. Prater and Mr. Carstens about your wanting to get the property out of your name?

A. No, sir—it just came up as I told you. I came over from home and went to Mr. Prater and said, “I am going away to-night, what [188—171] are you going to do with that old deal, Harry can’t do anything with it the way it is and there is nobody there and I am going to give him a bill of sale for it and if you want it, say the word,” and he said, “I don’t want anything to do with it, I don’t want the company mixed up with it at all.”

Q. Did you ever make an offer to Mr. W. H. Prater in Seattle or elsewhere to make a bill of sale to him of all the Alaska property?

A. The only time was when I went down there that time, to make it to him or the Carstens Packing Co.

Q. You did offer to do it?

A. Yes, sir, I offered to do it.

Q. Did you state to Mr. Prater that you wanted to get it out of your name so your wife’s attorneys couldn’t get hold of it?

A. No, there was no object—this property was out of the jurisdiction of the courts down there and it wasn’t worrying me at all on that score—I never lost any sleep over that part of it.

Q. You weren’t aware of the fact that they would take the decree down there and collect down there, by taking the proper steps?

(Testimony of J. A. Fagerberg.)

A. I didn't think it would go that far—it was a case of winning with me down there.

Q. Mr. Prater is mistaken then and stating an untruth if he testifies under oath that you proposed to him to turn over all that property to him, everything you had, which was subsequently, a few weeks afterwards, transferred to Harry, in order to prevent your wife getting hold of it?

A. I did not, but I offered it to him or the Carstens Packing Company.

Q. You didn't state it was because of your wife?

A. No, there was nothing about the wife—I came in and he asked me where I had been, etc.

Q. You did make an offer to your friend Bill to transfer all of this property to him? [189—172]

A. To him or the Carstens Packing Company.

Q. On what consideration?

A. That he would take care of Harry.

Q. That was the sole consideration?

A. That was the sole consideration, and look after the rest of the creditors up here, the local creditors of the layout.

Q. That was the sole basis?

A. That was the sole basis, the wife wasn't entering my mind at all.

Q. Now, then, in this same examination last fall before Mr. Ganty, referee, in which the testimony was taken by Mr. Hamburger, I find this transcript and I will ask you whether it is correct—recalling the question and answer I read to you—“Question. What was the arrangement you had with Carstens

(Testimony of J. A. Fagerberg.)

or the Carstens Packing Company about these goods that were shipped up last spring? Answer. After I went to Prater and gave him this talk, told him to protect himself and Harry and do what was right, shortly after, why the Shushana stampede started in any they got excited, anything I wanted then they would advance, they would pay my back alimony—I didn't have a dollar, I went broke on the *Krulum* deal. They first started in to hunt me and some of the boys thought that somebody was after me and they said, 'Get out of sight' and I went back home, and then Custer got hold of me by telephone, and he said, 'They want you to come up here,' and then they wanted me to go back on account of the Shushana stampede; that was along in August, 1913, and I went so far—Wilt got me over there in Tacoma and says, 'You are the only fellow that can go back there and get it back and we will do something with it.' I says, 'I will think about it,' and he says 'Well, if you ain't got the money we will advance you money to pay your [190—173] back alimony and everything else, go ahead and take hold of it again and we will stay with you,' and I said, 'All right,' and Prater agreed to it and when I came home my own folks said, 'Nothing doing, you stay here until you get this other settled up,' and my sister gave me \$45 so I could go to Cordova and the rest of the way I was to beat my way—that was in August, 1913.' Is that a correct statement of your testimony last fall?

A. That is incorrect there—that \$45 I got from the Carstens Packing Co.

(Testimony of J. A. Fagerberg.)

Q. This is a conversation between you and your home folks, you say, after talking about your conversation with the Carstens, my own folks said, “nothing doing,” etc.?

A. My sister didn’t give me the \$45—that is a mistake.

Q. You think that is a mistake in the stenographer’s notes?

A. That is a mistake in the stenographer’s notes—I was talking too fast for him.

Q. Is this also a mistake—near the bottom of Page 20; you remember the question and answer I read you a while ago wherein I asked you about your conversation with Mr. Wilt to the effect that you wanted to get this out of your name so your wife couldn’t get it and you answered, “I never talked to Mr. Wilt about it.” Now, on the same page you say, “Wilt got me over there in Tacoma, and says, ‘You are the only fellow that can go back there and get it back and we will do something with it.’ I says, ‘I will think about it,’ and he says, ‘Well, if you ain’t got the money we will advance you money to pay your back alimony and everything else’—Now which of those statements is correct, the statement made near the top of Page 20—that you never talked to Wilt about this, or the statement at the bottom of the page that he offered to pay your back alimony etc.?

Mr. DONOHOE.—We object to that—there is no contradiction in that. [191—174]

By the COURT.—I am not sure that there is a

(Testimony of J. A. Fagerberg.)

contradiction at present. If you find it and point it out to him, you may ask him.

Q. Read that question and answer—read to the bottom of the page. (Handing witness paper.) What I want to get at is, did you or did you not talk to C. F. Wilt about your trouble with your wife?

A. No, I didn't talk to Mr. Wilt about the trouble with my wife. He went with me to the office; Prater, Custer and Carstens had had a conference there in Tacoma and Mr. Wilt came in to it, and we walked out over the bridge there and I was going to take the boat and he was going up-town and I couldn't state just what the statements were, but as far as Mr. Wilt being in on the conversation or statements, I don't remember anything about it.

Q. You say you never talked to him and he never talked to you?

A. He never talked to me directly on anything of that kind. Mr. Carstens was the man—Mr. Prater was the man I went direct to.

Q. The question of back alimony never came up when Mr. Wilt was present?

A. Not when Wilt was present—it was between I and Mr. Carstens.

Q. In other parts of your testimony that you gave in that examination you stated and I believe you stated this morning, if I understood you correctly in answer to Mr. Donohoe's question, that as soon as the Shushana stampede started, Mr. Carstens was anxious for you to go up there and got after you—Now did they or did they not as one of the induce-

(Testimony of J. A. Fagerberg.)

ments offer to pay your back alimony to avoid trouble with your wife?

A. They offered to pay it, yes, sir.

Q. What was the final result of that?

A. Mr. Carstens asked me the amount and one thing and another—I can't recall exactly what was said.

Q. That dicker fell through entirely then?

A. Well, when I wouldn't go back, I called him up over long distance; [192—175] I was up at my brother-in-law's and he said, "All right," and he says, "We will just let it drag along."

Q. It was dropped then?

A. It was dropped then indefinitely.

Q. When did you return from Montana?

A. I went to LaConner and then went to Montana and didn't get back until some time in December, 1913.

Q. When and under what circumstances did you first meet Mr. Prater and Mr. Carstens after your return in December?

A. I couldn't say—I was down in the office several times.

Q. When did you begin negotiations with them on this prospective corporation deal?

A. We were talking over things—I was over in Tacoma several times—I was just talking to find out what he wanted done and how we should frame it up and the future of the thing and he even gave instructions, Mr. Carstens did, to come here and see Mr. Fish in regard to an old account.

(Testimony of J. A. Fagerberg.)

Q. You went over to see Mr. Carstens about this business? A. Yes, sir.

Q. And in a conversation didn't you propose that you organize an incorporation and you go into business on a large scale?

A. I couldn't say, I don't remember.

Q. To get the Shushana business?

A. I don't remember the outcome of the thing. We were talking over the whole thing and all the little details and one thing and another about it—I couldn't say.

Q. When you went over to see Mr. Carstens, was Mr. Wilt present, in January, 1914?

A. He might have been present; he was present some of the time and some of the time he was not.

Q. You discussed at considerable length this proposed incorporation [193—176] out of which Mr. Carstens was to get twenty-seven thousand shares, you ten and Harry seven?

A. There was nothing settled in regard to the incorporation—it was talked over in various ways.

Q. You never did come to any definite understanding about it?

A. It was a case of doing the best you can, Al.

Q. You never came to an agreement with them?

A. We never knew exactly what we would do.

Q. When you came to Alaska, you told Harry you had come to an understanding and the company was shortly to be incorporated?

A. I made him the proposition and told him what I would do and talked it over that way.

(Testimony of J. A. Fagerberg.)

Q. I want the status of this incorporation proposition—when you returned to Alaska in February, 1914; Harry has testified that you came up there and this agreement drawn up by Frank Foster for you boys to sign was only a temporary arrangement until you completed the articles of incorporation?

A. Yes, sir.

Q. Now, you say, as I understand you, that it was wholly indefinite when you left Seattle, that you never came to a distinct arrangement, distinct understanding?

A. After I came here and made the deal with Harry—I had the instructions—do the best you can and try to straighten the thing out and look out for my interests and I went up there with that understanding or authority, if I made the deal with Harry. I wrote Mr. Carstens and told him the circumstances and situation of the thing.

Q. Is it not a fact that you tried very hard to get Mr. Carstens to advance you considerable money to come back to Alaska on, particularly to buy these oats, pay the freight on them and buy [194—177] other goods to ship in there, in the belief that you could make some money in the Shushana with them?

A. No, I was not *try* to induce Mr. Carstens that way. I tried to induce Mr. Carstens to help me out on the Krumm property—I said, you are only protecting your own interests and you have a chance to make something on it.

Q. The proposition was that he was to stand good for those oats you were buying at LaConner?

A. No, sir, he had nothing to do with that—I was

(Testimony of J. A. Fagerberg.)

going to trade mining stock for oats and then I wanted him to turn to and possibly help me on the freight on the thing—that was outside of the deal, if I made any deal, with Harry. Harry wasn't in on the Krumm layout—that was the Tellurium Mines Company, a separate proposition altogether.

Q. You only tried to get money from Mr. Carstens for the development of the Krumm property?

A. Yes, sir.

Q. You said nothing about paying up money for those oats? A. No, sir.

Q. And didn't try to get him to put up money for buying a stock of goods to send up there?

A. No, sir.

Q. And he is mistaken if he thinks that is so?

A. Yes, sir.

Q. What was the arrangement between you and Mr. Carstens which induced you to draw a \$1,500 sight draft on him to pay the freight on those oats?

A. The oats were taken to McCarthy and were never taken to Cordova.

Q. Where did you draw the draft?

A. In McCarthy, through Mr. Lattin.

Q. You turned the draft in to Mr. Lattin?

[195—178]

A. I did.

Q. Did he deliver you the goods as soon as you drew the draft? A. Yes, sir.

Q. What authority had you to draw a sight draft on Mr. Carstens?

A. Only the authority I had, that I had the right

(Testimony of J. A. Fagerberg.)

to do that. I had asked for a man, to send me up a good bookkeeper—I said, “Don’t be cheap about the wages, just as long as the man is all right.”

Q. Did Mr. Carstens authorize you to draw on him under any circumstances, for any amount?

A. He never made any denial or said I could or could not.

Q. Did you say anything to him about the oats proposition?

A. We talked about it—through the Krumm property.

Q. Is it not a fact that you tried to get money from Mr. Carstens to prepay the freight on the oats?

A. No, it is not.

Q. But when you came away from Seattle, Mr. Carstens was not interested in the oats business at all?

A. He was not, no—he virtually had no interest in the oats because I took them on my own speculative interest.

Q. And when you drew a \$1,500 draft on Mr. Carstens at McCarthy you were simply trusting to his good nature?

A. I had consummated the deal with Harry on the incorporation and I had money enough that I could have got at McCarthy—the oats were simple enough—but I needed the money to take hold of the deal I had with Harry. I drew on him and advised him of the draft and asked him to send up a man from Tacoma.

Q. Have you a copy of the letter you wrote him?

(Testimony of J. A. Fagerberg.)

A. This was done by wire—I wired to him.

Q. Carstens is pretty easy to get money out of?

A. That depends how you look at it. [196—179]

Q. As I understood your testimony a few minutes ago, this matter of incorporation was up in the air when you left Seattle?

A. There was no definite plan settled upon—it was talked over one way and another how to deal with Harry.

Q. You came up and made a deal with Harry on your own responsibility and on the strength of that you drew on Mr. Carstens for \$1,500 to pay the freight on those oats that he had nothing to do with and wasn't interested in?

A. The oats were thrown into the deal when I consummated the deal with Harry and were part of the business.

Q. Did you make a proposition to Mr. Carstens that you were to buy those oats for stock in the Tel-lurium Mines Company and the stock was to be deposited in some kind of a deal with him as trustee in Seattle?

A. I don't remember—I was talking over so many propositions on that.

Q. Is it not a fact that nearly all your conversations with Mr. Tom Carstens in January and possibly February, 1914 came to nothing; that Mr. Carstens declined all of them except that he told you as you left that he would let you have \$200 worth of meat?

A. No, I don't remember any statement about

(Testimony of J. A. Fagerberg.)

\$200 worth of meat—I couldn't see where I could get any use out of \$200 worth of meat; that wouldn't last very long.

Q. Referring to your schedules in bankruptcy—here is a summary of the debts and assets; Schedule “A” is the indebtedness and here is a schedule of what you own. Now, there are only two items—the law, as you are probably advised by your attorney, requires you to make a return, whether you have anything or not and it is all represented by, first, stock in trade—that is the stock [197—180] at Blackburn, I suppose? A. Yes, I suppose so.

Q. \$5,745 and debts due on open accounts—\$215.50; property claimed to be exempt, \$100—clothing and jewelry and things like that. Now, that is all you owned; you owned nothing but that stock of goods at Blackburn and you had \$215.50 coming to you on open account?

A. On open account, personal account.

Q. Did you have anything coming to you from the government on your mail contract?

A. Not at that time, no, because I had thrown up the mail and turned that over to Leo Henderson.

Q. Did you have anything coming to you from any of those boys for whom Harry and Henderson had been freighting during the season?

A. No, not at that time.

Q. They had paid you up?

A. Yes, sir, they had paid me up.

Q. What had you done with the money?

A. Spent most of it for my personal expenses to

(Testimony of J. A. Fagerberg.)

Valdez and paid other small debts not in the bankruptcy schedule.

Q. When did you make a trip to Valdez, before this bankruptcy schedule was filed? A. Yes, sir.

Q. How much were your expenses?

Mr. DONOHOE.—We object to that as not proper cross-examination and having no bearing on this particular case.

By the COURT.—He may answer. (Witness did not answer.)

Q. How much did the boys earn in freighting from March to August?

A. I couldn't say, roughly speaking, what they did earn.

Q. About how much? [198—181]

A. The freighting over to the Shushana and the feed scattered over the line and the packing—I got all of Esterly's trade—

Q. Have you any idea how much they took in?

A. No, I have not, only in a general way I judge—the mail contracts for May and June I got \$300 a month on the Shushana and \$125 on the Nizina.

Q. How often was that paid, that mail contract in there? A. Every month.

Q. Paid promptly?

A. Yes, sir, paid promptly.

Q. So you had nothing due in September?

A. No, excepting the money Henderson got from finishing up the contracts.

Q. All the cash you got out of these contracts from March to August you had spent?

(Testimony of J. A. Fagerberg.)

A. Yes, paying freight bills and paying expenses.

Q. It wasn't a profitable business?

A. Just starting up that way; I went to a lot of extra expense and being cut off when the best season was starting. I had to get Mr. Seagraves to wire so the horses would be released so they wouldn't have to shut down the Dan Creek property and Esterly's.

Q. In this action that was brought against you last July, in which Mr. Donohoe has introduced the complaint in evidence, you filed an Answer in which you admit practically all of this indebtedness of \$4,000 except you claim credits that were not allowed you?

A. Yes, sir—I will admit they sent that stuff up here.

Q. Was it at your request?

A. Yes, it was sent at my instructions I sent down there and they also sent about \$3,500 worth over to Nizina besides this \$4,000 which made about \$8,000.

[199—182]

Q. \$500 to Nizina—who handled that?

A. Mrs. Cole handled it after I put Brown out of there.

Q. To whom was that sent?

A. To Elton Brown, care Fagerberg.

Q. That was an agent?

A. Yes, supposed to be an agent.

Q. Brown came up here about what time?

A. Some time in April—I don't remember just when.

Q. He was to represent the Carstens in the business? A. Yes, sir.

(Testimony of J. A. Fagerberg.)

Q. Part of the arrangement with Mr. Carstens was that he was to send a man up there?

A. Yes, I wired for a man to Tacoma.

Q. And he sent Mr. Brown? A. Yes, sir.

Q. You and Brown didn't affiliate very well?

A. We didn't affiliate, not two seconds.

Q. You refused to let Brown come into the game at all?

A. Not exactly—I put him over there at Chititu; he visited the place at Blackburn and he was over at Nizina and I put him to work figuring out some freight bills and one thing and another and he couldn't figure out a freight bill. He went to Chititu and I wouldn't stand for \$150 a month at Chititu any way.

Q. Who was running the store before Brown came? A. There was nobody there.

Q. It hadn't been opened?

A. It hadn't been opened—it was closed all the time I was gone.

Q. You simply sent a lot of things out there and opened it up?

A. Brown went over there with the goods, cleaned the place out and opened up the store with those goods. [200—183]

Q. This was in April, 1914?

A. It was about May, 1914, the first of May, I think.

Q. Were you selling much goods at Blackburn?

A. Quite a bit.

Q. What were your sales running, about?

(Testimony of J. A. Fagerberg.)

A. I judge a thousand or twelve hundred dollars a month.

Q. Had you made any remittances to the Carstens Packing Co. on account?

A. No, it was not my understanding that I was to make any remittance to the Carstens on account except for the meat.

Q. When did Wilt appear on the scene?

A. About July some time.

Q. At that time you had made no remittance to Mr. Carstens? A. No.

Q. You had sold a thousand or twelve hundred a month, something between three and four thousand dollars—what did you do with the money?

A. I transferred it around in the business and bought more stock.

Q. Where?

A. Schwabacher—I had the goods ordered up C. O. D.

Q. In your schedule in bankruptcy there is quite a list covering indebtedness to various persons—is Schwabacher included?

A. I don't think you will find a Schwabacher bill there.

Q. Schedule A—3, creditors whose claims are unsecured—A. Schillings & Co., San Francisco, \$834.57—you owed that—you had ordered that stuff?

A. Yes, sir.

Q. After you went up there in 1914?

A. After I went up there in 1914.

Q. And this Jennings Brothers account, Mt. Vernon is for oats principally? [201—184]

(Testimony of J. A. Fagerberg.)

A. Yes, sir.

Q. Butler Brothers, the Richmond Paper Co., Klock Produce Co., B. F. Goodrich Company, Rosenfeld & Rovils Company—these are accounts for goods you ordered that spring? A. Yes, sir

Q. And ordered on your own account?

A. Yes, sir.

Q. How were those ordered?

A. I couldn't remember just now.

Q. You ordered them as Fagerberg Brothers?

A. It may be Fagerberg Brothers—the account with Butler Bros. had always been carried as Fagerberg Brothers.

Q. Some of the goods came, some of the packages came, as Fagerberg Brothers?

A. They might have—I don't know, I couldn't say.

Q. Here is an order that somebody sent to Schwabacher Brothers, April 7, 1914—whose handwriting is that? (Handing witness paper.) A. My own.

Q. Did you send out that order?

A. I guess I did.

Mr. RITCHIE.—I offer this in evidence.

Mr. DONOHOE.—We object to the introduction of the proposed exhibit in evidence on the ground that it is incompetent, irrelevant and immaterial in this, that there is nothing to show that the plaintiff in this action had any knowledge whatever that such an order had been sent, nothing to show that he authorized the order in the name of Fagerberg Brothers. Objection overruled—plaintiff allowed an exception.

(Testimony of J. A. Fagerberg.)

Mr. RITCHIE.—This is an order on an order blank. [202—185]

Q. Where did you get that blank?

A. It was just an order book.

The order is marked Defendant's Exhibit #5, and read to the jury by Mr. Ritchie as follows:

Defendants' Exhibit No. 5 [Order].

Order No. 43.

Date April 7, 1914.

Schwabacher Bros.

Ship to Fagerberg Bros.

At McCarthy, Alaska.

When ———

How Ship, A. S. S. Co.

Terms, ———

Salesman, ———

Buyer, ———

McCarthy, Alaska, April 7, '14.

1 Case Peacock Buckwheat flour

Schwabacher Bros.

1 cs. Olympic Pancake Flour

Seattle, Wash.

1 gun Graham flour 10s.

Dear Sirs: Enclosed find our or-

2 " Corn Meal 10s.

der #43 for mdse. which please

1 bx. 20 lb. Split Peas

forward on first boat and oblige,

1 cs. Gold dust Washing powder

Yours truly,

5 cs. Kerosene

FAGERBERG BROS.

50 lb. Gran. Spud 5s Ev.

50 lb. Sliced " 5s Ev.

2000 lb. Cen. Best Flour

3 sk. Brown Beans

Mr. DONOHUE.—We make the further objection to the introduction of the exhibit on the ground that there is nothing shown by the exhibit who Fagerberg Brothers are or that the witness is a member of any firm called Fagerberg Brothers.

Objection overruled—plaintiff allowed an exception.

Q. This matter of doing business, using the name Fagerberg Brothers, was simply a habit, was it? It didn't mean anything in business?

(Testimony of J. A. Fagerberg.)

A. It didn't mean anything in that respect—I didn't have no new name to start on until this other fellow came up, until some definite arrangements were made in regard to it.

Q. As I asked Harry—you have been known as Fagerberg Brothers in a general way up in that country—the business has been done in that name for five or six years? And shipments have been made to you as Fagerberg Brothers?

A. Very few. [203—186]

Q. You had an ad in the paper here in Valdez as Fagerberg Brothers? A. Yes, sir.

Q. Who did that?

A. I did myself; I met Charley Wulff where the cafe is and Wulff had been at me for an ad, and I said, "What is it, go ahead," and he said, "\$2.50 a month."

Q. That was how long ago?

A. I don't remember how long ago.

Q. Was it two years ago?

A. It was worse than that.

Q. Three years ago?

A. Yes, it was worse than that. It was along in 1909 or 10, I couldn't tell you which.

Q. Suppose Mr. Wulff should appear and say that he had no connection with the Valdez Prospector until about the last of—July, 1912—then you are mistaken as to it?

A. No, I would not; Wulff was soliciting and working for the Valdez Prospector at that time.

Q. That would go back to 1909 or 10?

A. Along there somewheres, along in the spring.